

In The
Supreme Court of the United States

October Term, 1996

GUY E. ADAMS, *et al.*,*Petitioners,*

v.

CHARLIE FRANK ROBERTSON and LIBERTY
NATIONAL LIFE INSURANCE COMPANY,*Respondents.***On Writ Of Certiorari To The
Supreme Court Of Alabama****JOINT APPENDIX
VOLUME II, PAGES 246-536**

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**Petition For Certiorari Filed May 16, 1996
 Certiorari Granted October 1, 1996**

295 pp

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IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)
individually and on)
behalf of a class,)
Plaintiffs,) CIVIL ACTION
v.) NO. CV-92-021
LIBERTY NATIONAL LIFE)
INSURANCE COMPANY,)
Defendant.)

PROOF OF DISTRIBUTION OF PRINTED NOTICE
AND SUMMARY NOTICE

(Filed October 29, 1993)

Liberty National Life Insurance Company hereby shows unto the Court that it has complied with the notice obligations set forth in the Court's June 16, 1993 Order With Respect to Proposed Settlement, as amended by the Court's subsequent Order of August 2, 1993, and the Court's "Order Approving Printed Notice, Summary Notice, and Their Distribution and Publication" dated August 3, 1993. As shown by Exhibit 1 attached hereto, a printed notice has been duly distributed to class members in accordance with this Court's Orders, and the summary notice has been duly published in the newspapers required by the Court's Orders.

/s/ James W. Gewin
James W. Gewin

/s/ Michael R. Pennington
 Michael R. Pennington

OF COUNSEL:

BRADLEY, ARANT, ROSE & WHITE
 1400 Park Place Tower
 Birmingham, Alabama 35203
 (205) 521-8000

OF COUNSEL:

Horace Williams, Esq.
 125 South Orange Avenue
 P. O. Box 896
 Eufaula, AL 36072-0896

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing Proof of Distribution of Printed Notice and Summary Notice on

Jere Beasley, Esq.
 Frank Wilson, Esq.
 Beasley, Wilson, Allen,
 Main Crowe
 10th Floor Bell Building
 807 Montgomery Street
 P. O. Box 4160
 Montgomery, Ala. 36103-4160

Walter Byars, Esq.
 Steiner, Crum & Baker
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The Hon. William H.
 Robertson
 Circuit Court
 Barbour County
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 Suite 133
 Mobile, AL 36606

by placing a copy of same in the United States Mail, first-class postage prepaid and addressed to their regular mailing address, on this 28th day of October, 1993.

/s/ Michael R. Pennington
OF COUNSEL

PUBLISHER'S NOTE:

THE FOLLOWING PAGES WERE UNAVAILABLE FOR FILMING:

250 thru 253

EXHIBIT "1"

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)
individually and on)
behalf of a class,)
Plaintiffs,) CIVIL ACTION
) NO. CV-92-021
v.)
LIBERTY NATIONAL LIFE)
INSURANCE COMPANY,)
Defendant.)

AFFIDAVIT VERIFYING COMPLIANCE
WITH NOTICE OBLIGATIONS

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

Before me the undersigned Notary Public in and for said county and said state personally appeared Mr. Anthony L. McWhorter, who being known to me and

August 29, 1986 and (2) which provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and out-of-hospital prescription drugs, without monetary limits, and (3) were paid and in force (or in the grace period) on or after August 29, 1986, regardless of whether such policy thereafter lapsed or was replaced by a different Liberty National cancer policy after that date; *provided however*, that (i) any individual insured who is a named plaintiff in any other lawsuit against Liberty National which was filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer policies is excluded from the class *unless* such lawsuit has been voluntarily dismissed on or before the date this Settlement is finally approved by the Circuit Court of Barbour County, Alabama; and (ii) any individual insured whose "old policy" lapsed prior to August 29, 1986 and was not thereafter reinstated (after payment by the insured of all delinquent premiums) by Liberty National is excluded from the class; and (iii) any insured whose first Liberty National cancer policy was issued after August 29, 1986 is excluded from the class.

You are hereby notified, pursuant to Rule 23 of the Alabama Rules of Civil and [sic] Procedure and an order entered by this Court on June 16, 1993, that if you are a member of the class described above your rights will be affected by the above-styled class action and by a proposed settlement which will provide benefits to all members of the class described above, if approved by the

Court. The order entered by the Court on June 16, 1993 establishes a deadline of October 10, 1993 and other requirements for the filing of any objections to the proposed settlement. A hearing to determine whether the proposed settlement should be approved by the Court will be held on November 4, 1993 at 9:00 a.m. at the Barbour County Courthouse, Clayton, Alabama, at which time any person affected by the settlement may be heard thereon, provided the objector has complied with the Court's order. If you have not yet received the "Notice of Pendency of Action, Class Action Determination, Settlement and Settlement Hearing" which described this class action and the terms and conditions of the settlement, you may obtain a copy thereof by writing to: James A. Main, Beasley, Wilson, P.O. Box 4160, Montgomery, Alabama 36103-4160. If you have any questions concerning this matter, you may also contact class counsel James A. Main at the above address.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE FOR INFORMATION. The entire court file is available, however, for examination during regular office hours at the office of the clerk, Circuit Court of Barbour County, Alabama, Courthouse Square, Clayton, Alabama.

EXHIBIT G
IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)	CIVIL
individually and on behalf of a)	ACTION
class,)	NO. CV-92-021
Plaintiffs,)	
v.)	
LIBERTY NATIONAL LIFE)	
INSURANCE COMPANY,)	
Defendant.)	

MOTION FOR SUBSTITUTION OF NEW FAIRNESS
HEARING DATE IN DOCUMENTS TO BE MAILED
TO CLASS MEMBERS, FOR DESIGNATION OF
ADDRESS FOR SPECIAL MASTER, FOR
CORRECTION OF TYPOGRAPHICAL ERROR IN
JUNE 16, 1993, ORDER WITH RESPECT TO
PROPOSED SETTLEMENT, AND FOR CORRECTION
OF INADVERTENT OMISSION IN STIPULATION
PRIOR TO MAILING OF CLASS ACTION
NOTICE AND ATTACHMENTS

(Filed August 2, 1993)

Defendant Liberty National Life Insurance Company, with the consent of Class Counsel, hereby moves the court for: (1) Permission to substitute the corrected date of November 4, 1993 as the date of the Fairness Hearing in all documents to be mailed to Class Members; (2) for an order designating a post office box for ~~use~~ of the Special Master to be appointed by the Court, so that the address thereof may be listed in the appropriate places in

the Notice and Proof of Claim Form to be mailed to members of the class; (3) the correction of a typographical error or omission in paragraph 3 of the Court's Order With Respect to Proposed Settlement of June 16, 1993; and (4) the approval of the correction of an inadvertent omission in the Stipulation as provided in Exhibit A, attached, prior to mailing of the Notice of Stipulation to class members. As grounds therefor, Liberty National would show unto the Court as follows:

1. The Notice and Proof of Claim Form to be mailed to class members contains instructions to return the Proof of Claim form to the Special Master. However, as yet, no address has been designated by the Court for return of the Proof of Claim Forms. Before the Notice and Proof of Claim Form can be mailed to class members, an address must be inserted. The Notice, Proof of Claim Form and other attachments are due to be mailed on approximately August 16, 1993.

2. In the Court's Order With Respect to the Proposed Settlement, and particularly in paragraph 3 thereof, there is the following clause:

3. The Court finds for purposes of settlement that the Named Plaintiff's counsel are adequate representatives of and the Class Counsel for respectively, . . .

June 16, 1993 Order With Respect to Proposed Settlement, ¶ 3. There appears to have been an omission from this clause which makes the clause unintelligible. Counsel for the class and for Liberty National believe that the sentence was supposed to read as follows:

3. The Court finds for purposes of settlement that the Named Plaintiff and Class Counsel are adequate representatives of and counsel for the Class, respectively, . . .

Liberty National therefore requests the Court to order that paragraph 3 of the June 16, 1993 "Order With Respect to Proposed Settlement" is amended as herein reflected.

3. Liberty National further seeks permission from the Court to substitute the date of November 4, 1993 (in place of October 20, 1993) as the date of the fairness hearing for purposes of the printed notice, proof of claim form, and other documents to be mailed to Class Members, in accordance with the Court's oral announcement on July 27, 1993.

4. The Stipulation and Agreement of Compromise and Settlement executed by Liberty National and Class Counsel on June 16, 1993 contains an inadvertent omission which was discovered during the process of proof-reading the notice for purposes of printing and mailing. Under the Paragraph II-6 of the Stipulation, the Stipulation makes it clear that reformation of new policies currently in force will be available not only to class members who contemporaneously exchanged an old policy for a new policy, but also to "class members who lapsed the old policy, but bought a new policy within 30 days of that lapse, and those class members who originally contemporaneously switched from an old policy to a new policy, but subsequently switched from one policy to another new policy". Obviously, the same language should have been carried over to Paragraphs II-9, II-10, and II-12 of the Agreement, which deal with restitution and eligibility to share in the two supplementary pools. However, this

language was inadvertently omitted from paragraphs II-9, II-10, and II-12 of the Stipulation. As shown by Exhibit A hereto and pursuant to this Court's June 16, 1993 Order, Named Plaintiff, Class Counsel and Liberty National are in agreement that the Stipulation should be corrected in this regard before the printed notice and Stipulation and mailed to class members.

WHEREFORE, Liberty National respectfully requests the Court to enter an Order designating a post office box or address for return by class members of the Proof of Claim forms to the Special Master; to enter an order correcting paragraph 3 of the June 16, 1993 "Order With Respect to Proposed Settlement" as reflected herein or in such manner as the Court may deem appropriate; to enter an order approving the substitution of the date of November 4, 1993 as the date of the fairness hearing in all documents to be mailed to Class Members; and to enter an Order approving the correction of the inadvertent omission described above in the Stipulation and Agreement of Compromise and Settlement before said Stipulation is mailed to class members. For the convenience of the Court, a proposed order is attached.

/s/ James W. Gewin
James W. Gewin

/s/ Michael R. Pennington
Michael R. Pennington

Counsel for Liberty National Life
Insurance Company

OF COUNSEL:

BRADLEY, ARANT, ROSE & WHITE
1400 Park Place Tower
Birmingham, Alabama 35203
(205) 521-8000

/s/ Horace Williams
Horace Williams
Counsel for Liberty
National Life Insurance
Company

P.O. Box 896
Eufaula, Alabama 36072-0896

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing Motion For Designation Of Address Of Special Master, for Correction of Typographical Error in Proposed Order of June 16, 1993, and for Correction of Inadvertent Omission in Stipulation Prior to Mailing of Class Action Notice And Attachments on

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 First Alabama Bank Building
 Montgomery, AL 36104

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 Mobile, Alabama 36652-2767

by placing a copy of same in the United States Mail, first-class postage prepaid and addressed to their regular mailing address, on this 30 day of July, 1993.

/s/ Horace Williams
 Of Counsel

EXHIBIT A

IN THE CIRCUIT COURT OF
 BARBOUR COUNTY, ALABAMA
 CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)	
individually and on behalf of a)	
class,)	CIVIL
Plaintiffs,)	ACTION
v.)	NO. CV-92-021
LIBERTY NATIONAL LIFE)	
INSURANCE COMPANY,)	
Defendant.)	

AMENDMENT TO JUNE 16, 1993 STIPULATION AND
 AGREEMENT OF COMPROMISE AND SETTLEMENT

Named plaintiff Charlie Frank Robertson, Class Counsel Jere Beasley, James Main, Frank Wilson, and Walter Byars, and defendant Liberty National hereby agree, subject to court approval, that the Stipulation and Agreement of Compromise and Settlement ("Stipulation") heretofore executed by them on June 16, 1993, is hereby amended to correct an inadvertent omission, by adding the following sentence to the end of each of paragraphs II-9, II-10 and II-12 of the Stipulation.

Class members eligible hereunder for the benefits of this paragraph shall include and be limited to those class members described in this paragraph who contemporaneously switched from an old policy to a new policy (including class members who lapsed the old policy, but bought a new policy within 30 days of that

lapse), and any such class members who originally contemporaneously switched from an old policy to a new policy but subsequently switched from one new policy to another new policy.

DATED: July 29, 1993.

/s/ Charlie Frank Robertson
 Charlie Frank Robertson,
 Named Plaintiff, individually
 and on behalf of the Class

/s/ Jere Beasley by James
 Jere Beasley

/s/ Frank Wilson by James
 Frank Wilson

/s/ James Allen Main
 James Main

Class Counsel

OF COUNSEL:

Beasley, Wilson, Allen, Main & Crow
 10th Floor Bell Building
 807 Montgomery Street
 P.O. Box 4160
 Montgomery, Alabama 36103-4160

/s/ Walter R. Byars
 Walter Byars, Class Counsel

OF COUNSEL:

Steiner, Crum & Baker
 8th Floor
 First Alabama Bank Building
 Montgomery, AL 36104

LIBERTY NATIONAL LIFE
 INSURANCE COMPANY

By: /s/ William C. Barclift
 William C. Barclift
 Its: General Counsel

/s/ James W. Gewin
 James W. Gewin
 One of the Attorneys for
 Liberty National Life
 Insurance Company

OF COUNSEL:

BRADLEY, ARANT, ROSE & WHITE
 1400 Park Place Tower
 Birmingham, Alabama 35203
 (205) 521-8000

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)
individually and on behalf of a)
class,)
Plaintiffs,) CIVIL
v.) ACTION
LIBERTY NATIONAL LIFE) NO. CV-92-021
INSURANCE COMPANY,)
Defendant.)

ORDER

(Filed August 2, 1993)

This matter having come on to be heard upon the motion heretofore filed by Liberty National Life Insurance Company, with the consent of Class Counsel, entitled "Motion for Substitution of New Fairness Hearing Date in Documents to be Mailed to Class Members, for Designation of a Address of Special Master, For Correction of Typographical Error in June 16, 1993 Order With Respect to Proposed Settlement, and for Correction of Inadvertent Omission in Stipulation Prior to Mailing of Class Action Notice and Attachments," and the Court having considered said motion.

It is therefore ORDERED, ADJUDGED and DECREED as follows:

1. The special master's address to be included in the class action notice and certain of its attachments shall be as follows:

P.O. Box 1449
Eufaula, Al 36072-1449

2. The first clause of paragraph 3 of the Court's Order With Respect to Proposed Settlement of June 16, 1993 is hereby amended to read as follows:

3. The Court finds for purposes of settlement that the Named Plaintiff and Class Counsel are adequate representatives of and counsel for the class, respectively, . . .

Said Order is further amended to substitute the date of November 4, 1993 as the date of the Fairness Hearing previously scheduled for October 20, 1993. Except as amended herein, the June 19, 1993 Order With Respect to Proposed Settlement and the deadlines contained therein shall remain unchanged. Liberty National is authorized to substitute the corrections provided herein when it reproduces the June 16, 1993 Order With Respect to Proposed Settlement and other documents in connection with the printing and mailing of the Class Action Notice.

3. The "Amendment to June 16, 1993 Stipulation and Agreement of Compromise and Settlement" which is attached as Exhibit A to the above-referenced motion is hereby APPROVED, and Liberty National is authorized to insert the additional sentence set forth in said amendment at the end of paragraphs II-9, II-10, and II-12 of the Stipulation for purposes of printing and mailing the Class Action Notice and its attachments.

DATED this 2nd day of Aug, 1993.

/s/ W. H. Robertson
Circuit Judge

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)
individually and on behalf of a)
class,) CIVIL
Plaintiffs,) ACTION
v.) NO. CV-92-021
LIBERTY NATIONAL LIFE)
INSURANCE COMPANY,)
Defendant.)

NOTICE OF INTENT TO MAIL CLASS ACTION
NOTICE AND TO PUBLISH SUMMARY NOTICE,
AND MOTION FOR APPROVAL OF PRINTED
NOTICE, SUMMARY NOTICE AND THEIR
DISTRIBUTION AND PUBLICATION

(Filed August 3, 1993)

Defendant Liberty National Life Insurance Company herein gives notice of the steps it has taken and is taking to comply with the orders heretofore entered by the Court regarding the mailing and publication of the class action notices, and, out of an abundance of caution, and in light of the change in the fairness hearing date ordered by the Court, and other corrections approved by the Court in the documents to be mailed to class members, Liberty National hereby requests pre-distribution court approval of the final printed notice, the summary notice, and the distribution and publication thereof, all as follows:

1. Not later than August 29, 1993, Liberty National intends to cause to be published in the newspapers described in paragraph 7(c) of the Court's June 16, 1993 Order a summary notice in the form attached hereto as Exhibit 1. Said notice will be published in each of the newspapers identified by name in paragraph 7(c) of the Order, and in one newspaper (within the top three in circulation) in each other state in which Liberty National cancer policies have ever been approved for issuance. Liberty National wishes to inform the Court that in some instances, Liberty National cancer policies were approved many years ago for issuance in certain states, but were never actually issued in such states. Nevertheless, in accordance with this Court's Order of June 16, 1993, Liberty National intends to publish notice in newspapers in every state where Liberty National cancer policies were approved for issuance, even where no policies were ever actually issued.

2. Attached hereto as Exhibit 2 is a sample proof of the printed Notice which Liberty National intends to mail as required by this Court's Order of June 16, 1993. The proof includes all corrections heretofore approved by the Court. The notice to be mailed shall be in the form of Exhibit 2, except that the Notice will be bound in booklet form, with printing on both sides of the page, and with perforations for easier removal and submission of the Proof of Claim Form. Liberty National intends to mail a copy of this booklet to each of the persons described below on approximately August 16, 1993, by United States mail, first-class postage prepaid. Liberty National, out of an abundance of caution, seeks confirmation by the Court that this printed notice complies with the Court's

June 16, 1993 Order prior to its distribution, so that any remaining errors or omissions can be corrected before the notice is mailed.

3. Liberty National has assembled or is assembling the names and last known addresses of the approximately 400,000 class members whose identities and last known addresses are reasonably ascertainable from Liberty National's records and who are entitled to receive notice under this Court's Order of June 16, 1993, to the best of Liberty National's knowledge. Liberty National has identified and is identifying such persons as follows:

a. Liberty National has determined or is determining from its records the names and last known addresses of each named insured on each "old policy" (as that term is defined in the Stipulation) which was in force or in the grace period on or after August 29, 1986, according to Liberty National's records. Only persons insured under "old policies" which were in force or in the grace period on or after August 29, 1986 are members of the Class. Notices sent to this group will be addressed to each such named insured "and family."

b. Liberty National intends to mail the notice to any and all insureds who have submitted any claims for benefits for cancer treatment rendered to any covered person under any "new policy" (as that term is defined in the Stipulation) since August 29, 1986; provided, however, that notice will not be mailed to those cancer claimants who can be identified from Liberty National records as persons who are not class members. Liberty National also intends to mail notice to all class members who have filed

actions against Liberty National concerning the "alleged cancer exchange programs" as defined in the Stipulation. Insureds who filed such separate actions prior to March 10, 1993, and who would become members of the class if their pending actions are voluntarily dismissed without prejudice prior to any final approval of the Settlement, will be mailed a copy of the notice as well.

c. Collectively, the named insureds (and their insured family members) under "old policies" which were in force or in the grace period on or after August 29, 1986 constitute all members of the class. Current policyholders are not class members unless they were previously insured under "old policies" which were in force or in the grace period on or after August 29, 1986, and the Order entered by the Court on June 16, 1993 contemplates that Liberty National need not send notice to persons who are not class members. As noted above, all notices sent to named insureds under old policies which were in force or in the grace period on or after August 29, 1986 will be addressed to the pertinent named insured "and family", which collectively constitute all members of the class.

4. In addition to the foregoing, for any class action notices which are returned by the postal service undelivered, Liberty National intends to use its best efforts to identify (from National Change of Address registries, or otherwise) the present address of the intended recipient, and to mail or personally deliver notice to each such individual no later than 30 days in advance of the fairness hearing, in compliance with the Court's June 16, 1993 Order.

5. Between now and August 16, 1993, Liberty National intends to take the steps necessary to accomplish the actual printing and physical mailing of the approximately 400,000 notices to be mailed as described herein. **Liberty National has been advised by its printing contractor that the printing contractor must begin printing the notice no later than Thursday, August 5, 1993 in order to physically accomplish the printing and mailing by August 16, 1993.**

6. After the actual mailing and distribution of the printed notice and publication of the summary notice as described herein, Liberty National will file with the Court an affidavit verifying its implementation of and compliance with the distribution and publication procedures described above, and verifying that the actual mailing, publication, and follow-up notice efforts have taken place.

WHEREFORE, Liberty National Life Insurance Company respectfully requests the Court to approve and authorize Liberty National to proceed with the printed notice, the summary notice, distribution of the notice and publication of the summary notice, all as described herein, and to approve said notice, summary notice, distribution and publication as constituting compliance with the Court's June 16, 1993 Order, if said distribution and publication is implemented as described herein. For the convenience of the Court, a proposed Order is attached.

/s/ James Gewin/MPR
James W. Gewin

/s/ M.R. Pennington
Michael R. Pennington

Counsel for Liberty National
Life Insurance Company/

OF COUNSEL:

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1400 Park Place Tower
Birmingham, Alabama 35203
(205) 521-8000

/s/ Horace Williams
Horace Williams
Counsel for Liberty
National Life Insurance
Company

OF COUNSEL:

P.O. Box 896
Eufaula, Alabama 36072-0896

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing Notice of Intent To Mail Class Action Request Notice And Request For Approval on

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Hand Arendall, Bedsole, Greaves and Johnston
P.O. Box 123
Mobile, Alabama 36601,

Mary Katherine Miller, Esq.
 Armbrecht, Jackson, DeMouy, Crowe,
 Holmes & Reeves
 P.O. Box 290
 Mobile, AL 36601

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 Richardson, Daniel, Spear and Upton
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 Mobile, Alabama 36609

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 8th Floor
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 Montgomery, AL 36104

Larry U. Sims, Esq.
 Helmsing, Lyons, Sims & Leach
 P.O. Box 2767
 Mobile, Alabama 36652-2767

by placing a copy of same in the United States Mail, first-class postage prepaid and addressed to their regular mailing address, on this 3 day of July, 1993.

/s/ Horace Williams
 Of Counsel

EX. A
 IN THE CIRCUIT COURT OF
 BARBOUR COUNTY, ALABAMA
 CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,))
individually and on behalf of))
a class,))
Plaintiffs,)	CIVIL ACTION
v.)	NO. CV-92-021
LIBERTY NATIONAL LIFE))
INSURANCE COMPANY,))
Defendant.))

SUMMARY NOTICE OF THE PENDENCY OF CLASS
 ACTION AND PROPOSED SETTLEMENT THEREOF

TO: ALL MEMBERS OF THE FOLLOWING CLASS:

All persons who now or in the past were insured under any cancer policies which (1) were issued by Liberty National Life Insurance Company ("Liberty National") on or before August 29, 1986 and (2) which provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and out-of-hospital prescription drugs, without monetary limits, and (3) were paid and in force (or in the grace period) on or after August 29, 1986, regardless of whether such policy thereafter lapsed or was replaced by a different Liberty National cancer policy after that date; *provided, however, that* (i) any individual insured who is a named plaintiff in any other lawsuit against Liberty National which was filed on or before March 10, 1993 and

which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer policies is excluded from the class *unless* such lawsuit has been voluntarily dismissed on or before the date this Settlement is finally approved by the Circuit Court of Barbour County, Alabama; and (ii) any individual insured whose "old policy" lapsed prior to August 20, 1986 and was not thereafter reinstated (after payment by the insured of all delinquent premiums) by Liberty National is excluded from the class; and (iii) any insured whose first Liberty National cancer policy was issued after August 29, 1986 is excluded from the class.

You are hereby notified, pursuant to Rule 23 of the Alabama Rules of Civil and [sic] Procedure and an order entered by this Court on June 16, 1993, that if you are a member of the class described above your rights will be affected by the above-styled class action and by a proposed settlement which will provide benefits to all members of the class described above, if approved by the Court. The order entered by the Court on June 16, 1993 establishes a deadline of October 10, 1993 and other requirements for the filing of any objections to the proposed settlement. A hearing to determine whether the proposed settlement should be approved by the Court will be held on November 4, 1993 at 9:00 a.m. at the Barbour County Courthouse, Clayton, Alabama, at which time any person affected by the settlement may be heard thereon, provided the objector has complied with the Court's order. If you have not yet received the "Notice of

Pendency of Action, Class Action Determination, Settlement and Settlement Hearing" which describes this class action and the terms and conditions of the settlement, you may obtain a copy thereof by writing to: James A. Main, Beasley, Wilson, P.O. Box 4160, Montgomery, Alabama 36103-4160. If you have any questions concerning this matter, you may also contact class counsel James A. Main at the above address.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE FOR INFORMATION. The entire court file is available, however, for examination during regular office hours at the office of the clerk, Circuit Court of Barbour County, Alabama, Courthouse Square, Clayton, Alabama.

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)
individually and on behalf of)
a class,)
Plaintiffs,) CIVIL ACTION
v.) NO. CV-92-021
LIBERTY NATIONAL LIFE)
INSURANCE COMPANY,)
Defendant.)

ORDER APPROVING PRINTED NOTICE,
SUMMARY NOTICE, AND
THEIR DISTRIBUTION AND PUBLICATION

This matter having come before the Court on a Motion of Liberty National Life Insurance Company for approval of the printed notice, summary notice and the distribution and publication thereof, and the Court having considered the same, and having concluded that the motion should be granted,

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. The summary notice attached as Exhibit 1 to the above-described motion is approved as being in compliance with the Court's Order With Respect To Proposed Settlement of June 16, 1993.

2. The printed notice attached as Exhibit 2 to the above-described motion is approved as being in compliance with the Court's Order With Respect To Proposed Settlement dated June 16, 1993.

3. Liberty National is authorized to proceed with the mailing of the printed notice and publication of the summary notice as described in the motion, all of which the Court hereby approves as contemplated by the Court's Order With Respect to Proposed Settlement dated June 16, 1993.

DONE AND ORDERED this the _____ day of _____, 1993.

/s/ _____
Circuit Judge

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)
individually and on behalf of)
a class,)
Plaintiffs,)
	CIVIL ACTION
	NO. CV-92-021
v.)
LIBERTY NATIONAL LIFE)
INSURANCE COMPANY,)
Defendant.)

ORDER APPROVING PRINTED NOTICE,
SUMMARY NOTICE, AND THEIR
DISTRIBUTION AND PUBLICATION

(Filed August 3, 1993)

This matter having come before the Court on a Motion of Liberty National Life Insurance Company for approval of the printed notice, summary notice and the distribution and publication thereof, and the Court having considered the same, and having concluded that the motion should be granted,

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. The summary notice attached as Exhibit 1 to the above-described motion is approved as being in compliance with the Court's Order With Respect To Proposed Settlement of June 16, 1993.

2. The printed notice attached as Exhibit 2 to the above-described motion is approved as being in compliance with the Court's Order With Respect To Proposed Settlement dated June 16, 1993.

3. Liberty National is authorized to proceed with the mailing of the printed notice and publication of the summary notice as described in the motion, all of which the Court hereby approves as contemplated by the Court's Order With Respect to Proposed Settlement dated June 16, 1993.

DONE AND ORDERED this the 3rd day of August, 1993.

/s/ W. H. Robertson
Circuit Judge

EXHIBIT H

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)
individually and on behalf of)
a class,)
Plaintiffs,) CIVIL ACTION
) NO. CV-92-021
v.)
LIBERTY NATIONAL LIFE)
INSURANCE COMPANY,)
Defendant.)

**NOTICE OF PENDENCY OF ACTION,
CLASS ACTION DETERMINATION,
SETTLEMENT AND SETTLEMENT HEARING**

TO: MEMBERS OF THE FOLLOWING CLASS:

All persons who now or in the past were insured under any cancer policy which (1) was issued by Liberty National Life Insurance Company ("Liberty National") on or before August 29, 1986 and (2) which provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs, without monetary limits, and (3) was paid and in force (or in the grace period) on or after August 29, 1986, regardless of whether such policy remains in force, thereafter lapsed or was replaced by a different Liberty National cancer policy after that date; *provided, however, that* (i) any individual insured who is or

was a named plaintiff in any separate lawsuit was filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies is excluded from the class *unless* such lawsuit has been voluntarily dismissed without prejudice on or before the date this Settlement is finally approved by the Circuit Court of Barbour County, Alabama; (ii) any insured whose "old policy" lapsed prior to August 29, 1986 and was not thereafter reinstated (after payment by the insured of all delinquent premiums) by Liberty National is excluded from the class; and (iii) any insured whose first Liberty National cancer policy was a new policy form issued after August 29, 1986 is excluded from the class.

PLEASE READ THIS NOTICE CAREFULLY IN ITS ENTIRETY. IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED BY LEGAL PROCEEDINGS IN THIS CLASS ACTION. THE NAMED PLAINTIFF, CLASS COUNSEL, AND DEFENDANT HAVE AGREED TO A CLASS ACTION SETTLEMENT OF THE LITIGATION WHICH PROVIDES FOR BENEFITS TO MEMBERS OF THE CLASS IF THE SETTLEMENT IS APPROVED BY THE COURT. IF THE SETTLEMENT IS APPROVED, IT WILL BE BINDING UPON ALL MEMBERS OF THE CLASS. [NOTE: THE TERMS "OLD POLICY" AND "NEW POLICY" ARE DEFINED ON PAGE 3 BELOW, UNDER THE HEADING "DEFINITIONS"].

I. THE SETTLEMENT HEARING

This notice is given pursuant to Rule 23 of the Alabama Rules of Civil Procedure and pursuant to an order of the Circuit Court of Barbour County, Alabama ("the Court") entered in the above-entitled action (the "litigation"), which is more particularly described below under the caption "background." If you are a member of the Class (defined above), you have an interest in the litigation. You are hereby notified that a hearing will be held before the Court at the Barbour County Courthouse, Court Square, Clayton, Alabama, on November 4, 1993 at 9:00 a.m., and that said hearing shall begin on that date and may be adjourned and continue from time to time without further notice except as announced at said hearing. The purpose of said hearing (the "fairness hearing" or "settlement hearing")— is to determine whether (i) the Stipulation and Agreement of Compromise and Settlement dated June 16, 1993 (the "Stipulation"), a copy of which is attached hereto as Exhibit 1 (See p. 19, below], and the terms and conditions of the Settlement proposed in the Stipulation ("The Settlement"), are fair, reasonable and adequate and should be approved, and (ii) whether an order and final judgment should be entered granting injunctive, declaratory and equitable relief (including reformation of policies, ancillary restitution and other ancillary monetary relief) necessary to implement the Settlement, and dismissing the litigation and all claims of any Class Member which were or could be asserted therein in their entirety with prejudice, and approving the release of all claims of any class member within the scope of the Settlement; (iii) whether the Court should

enter an Order, pursuant to the Stipulation and Settlement, permanently barring and enjoining the institution or prosecution of other actions or proceedings asserting any claims which are Released Claims as defined in Section III of the Stipulation; (iv) whether this action is properly maintained as a class action pursuant to Rule 23(b)(2) of the Alabama Rules of Civil Procedure; (v) whether Named Plaintiff is a proper and adequate representative of the Class; and (vi) all other matters relating to the question of whether the Settlement should be approved and enforced according to its terms. The Court has reserved the right to adjourn the settlement hearing from time to time by oral announcement at such hearing or any adjournment thereof, without further notice of any kind. The Court has also reserved the right to approve the Stipulation before it and the Settlement, with or without modifications; to enter its Final Judgment dismissing the litigation with prejudice in its entirety; to order the payment of attorneys' fees and expenses; and to tax and order the payment of costs, including fees and expenses of experts and consultants; all without further notice of any kind.

II. CLASS ACTION DETERMINATION

The Court has ordered that the litigation shall be maintained as a class action brought by the Named Plaintiff Charlie Frank Robertson as class representative, pursuant to Rule 23(b)(2) of the Alabama Rules of Civil Procedure, on behalf of a class consisting of:

All persons who now or in the past were insured under any cancer policy which (1) was

issued by Liberty National Insurance Company ("Liberty National") on or before August 29, 1986 and (2) which provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs, without monetary limits, and (3) was paid and in force (or in the grace period) on or after August 29, 1986, regardless of whether such policy remains in force, thereafter lapsed or was replaced by a different Liberty National cancer policy after that date; provided, however, that (i) any individual insured who is or was a named plaintiff in any separate lawsuit which was filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies is excluded from the class *unless* such lawsuit has been voluntarily dismissed without prejudice on or before the date this Settlement is finally approved by the Circuit Court of Barbour County, Alabama; (ii) any insured whose "old policy" lapsed prior to August 29, 1986 and was not thereafter reinstated (after payment by the insured of all delinquent premiums) by Liberty National is excluded from the class; and (iii) any insured whose first Liberty National cancer policy was a new policy form issued after August 29, 1986 is excluded from the class.

The Court has preliminarily determined that the nature of the interests of the Class Members, the nature of the proposed Settlement, the primacy of the injunctive and equitable relief called for by the Settlement and

which would appear to be justified if the conduct alleged by Named Plaintiff (but denied by Liberty National) is assumed to be true, and the fact that the vast majority of Class Members have suffered no actual out-of-pocket losses or monetary damages as a result of the conduct alleged in this action, even assuming those allegations to be true, make this action inappropriate for certification under Alabama Rule of Civil Procedure 23(b)(3).

The Court has preliminarily found, for purposes of the settlement proceedings, that the Named Plaintiff's claims are typical of the Class, that there are questions of law and fact common to the Class, that the Class is so numerous that joinder of all Members of the Class is impracticable, and that the Named Plaintiff and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Class. The Court has further found, for purposes of the settlement proceedings, that the alleged (but denied) actions of defendant would appear to make it appropriate for the Court to enter final injunctive and equitable relief with respect to the Class as a whole, and to order certain restitution and other monetary relief incidental to the primary injunctive and equitable relief.

The Court has designated the Named Plaintiff to act as representative for the Class and has designated Named Plaintiff's counsel - James A. Main, Jere Beasley, and Frank Wilson of Beasley, Wilson, Allen, Main and Crow, P.C., and Walter Byars of Steiner, Crum and Baker - as Class Counsel. Communications with the class representative and Class Counsel may be directed to the attention of James A. Main, Beasley, Wilson, Allen, Main & Crow, P.O. Box 4160, Montgomery, Alabama 36103-4160.

III. BACKGROUND FACTS AND TERMS OF SETTLEMENT

DEFINITIONS

The following words or phrases, whenever they appear in this Notice, shall have the following meaning ascribed to them, and the singular includes the plural, and the plural the singular:

1. **"Old Policy" and "Old Cancer Policy"** shall mean any cancer insurance policy or policies issued by Liberty National Life Insurance Company ("Liberty National") which (i) contained no monetary limits or exclusions regarding benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs, and (ii) which was issued prior to August 29, 1986.

2. **"New Policy" and "New Cancer Policy"** shall mean any cancer insurance policy or policies issued by Liberty National on or after August 29, 1986 which contained monetary limits upon or exclusions of benefits for otherwise covered radiation, chemotherapy, and prescription chemotherapy drugs and provided no benefits or coverage for other out-of-hospital prescription drugs (but also contained certain other new or enhanced benefits).

3. **"Class"** shall mean the Class certified by the Barbour County Circuit Court as described on page 1 of this Notice.

4. **"Named Insured" or "Policyholder"** shall mean the person listed as "insured" on the face of the policy, and to whom benefits under the policy for the treatment

of persons covered under the policy are payable by the terms of the policy.

5. **"Covered persons"** shall mean dependents of the named insured who are covered persons within the meaning of the applicable policy.

6. **"Other out-of-hospital prescription drugs" or "other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer"** shall mean all prescription drugs, other than prescription chemotherapy drugs, prescribed for any covered person with a diagnosis of cancer for use outside of a hospital in the (i) treatment of cancer, or (ii) treatment of the effects of cancer or of cancer treatment.

There has been no trial of this action, and the Court has made no findings of fact or liability on the merits of the causes of action alleged by the Named Plaintiff or the defenses available to Liberty National. The Stipulation attached hereto contains a brief recitation of the facts and claims involved in this Litigation, as well as a complete statement of the terms of the proposed Settlement. The Settlement will provide substantial benefits to the class as a whole if the Settlement is finally approved by the Court.

The principal background facts, terms, conditions and other matters pertaining to the Stipulation and the Settlement which it contemplates are summarized below. The entire Stipulation (Exhibit I attached hereto) should be reviewed for a more complete and detailed statement of the terms of the Settlement. The Stipulation shall govern the implementation and enforcement of the Settlement in the event the Settlement is finally approved.

Liberty National is an insurance company which offers, in addition to other insurance products, policies of insurance providing benefits to policyholders and insureds who are diagnosed with cancer.

Liberty National had in force, prior to August 29, 1986, old cancer policies which, among other benefits, provided benefits payable without monetary limits to the named insureds under such policies for themselves and other insured family members ("covered person") for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs.

It is alleged in this action that, beginning on or about August 29, 1986, and on other occasions thereafter, Liberty National instituted a program or programs to offer those customers having the old cancer policies the opportunity to replace their old cancer policies then in effect with one of several new cancer policies which contained substantial new benefits not provided by the old policies, but also contained monetary limits for otherwise covered radiation, chemotherapy and prescription chemotherapy drugs, and provided no benefit for other out-of-hospital prescription drugs (the "alleged cancer policy exchange programs").

The new policies provided certain new or enhanced benefits not provided by the old policy including, but not limited to, the following new benefits under certain of the "new policy" forms: a "first occurrence" benefit payable to the named insured for each insured upon initial diagnosis of cancer; dread disease benefits; hospice benefits; benefits for prostheses; experimental treatment benefits; disability income benefits; and other new benefits.

As of August 29, 1986, Liberty National discontinued the sale of old policies, although old policies issued prior to that date remained in force for those who already had such policies, chose not to replace the old policy with the new policy, and continued to pay premiums on the old policy as and when due.

Under all old policies and new policies, all benefits payable for the treatment rendered to any insured are payable to the named insured under the policy.

Charlie Frank Robertson ("Robertson"), prior to August 29, 1986, had purchased from Liberty National one of the old cancer policies defined in definition 1 above. After August 29, 1986, Robertson terminated his old policy and purchased one of the new policies to replace his old policy. Robertson was also the named insured under the new policy. Robertson has not been diagnosed with cancer and has made no claim for benefits under the new policy.

Robertson, on behalf of himself and the Class, contends that in the course of implementing the alleged cancer policy exchange programs, Liberty National misrepresented or failed to disclose material facts as to the limits imposed by the new policies on benefits for radiation, chemotherapy and prescription chemotherapy drugs and the elimination of coverage for other out-of-hospital prescription drugs, and failed to adequately inform policyholders that such coverages were provided without such monetary limits or exclusion under the old policies.

Liberty National vigorously denies Robertson's allegations, and Liberty National contends that the new policies provided substantially greater overall monetary

benefits or coverage to most, if not all, policyholders or insureds, and have paid greater overall benefits to a large majority of named insureds who submitted cancer claims.

The proposed Settlement confers substantial benefits upon the Class Members. The Settlement, *if approved*, will include the following benefits to Class Members, subject to the terms and conditions of the Stipulation:

(1) Class Members who are named insureds under new policies currently in force and who qualify under paragraph II-6 of the Stipulation will receive an automatic increase in their coverage (without any additional premium) such that, so long as the current new policy is kept in force and all premiums are paid, the policy will provide prospective benefits without any "caps" or monetary limits for otherwise covered radiation treatment, chemotherapy treatment, prescription chemotherapy drugs, or other out-of-hospital prescription drugs administered to any covered person under the policy in connection with the treatment of cancer. Persons who are not Class Members are not entitled to this benefit. Only Class Members who qualify under paragraph II-6 of the Stipulation are entitled to this benefit. If you are a Class Member and you currently have a new policy in force and you otherwise qualify under paragraph II-6 of the Stipulation, you do not have to submit any Proof of Claim Form to receive this expanded coverage benefit.

(2) All premiums for new policies of Class Members which are currently in force and old policies of Class Members which are currently in force will be frozen until January 1, 1995. If you are a Class Member, and you have a Liberty

National cancer policy currently in force, you do not have to submit any Proof of Claim Form to receive this premium freeze benefit. Persons who are not Class Members will not receive this premium freeze benefit. Class members who do not have a Liberty National old policy or new policy currently in force will not receive this benefit.

(3) The claims and premium experience of Class Members currently insured under old or new policies will be pooled for purposes of any rate filings or premium increases after January 1, 1995, except as otherwise ordered by the insurance departments of the states in which the policies are issued. Persons who are not Class Members are not required to be "pooled" with Class Members for the purposes of future rate filings or premium increases. Class Members with Liberty National cancer policies currently in force will receive this pooling benefit automatically if the Settlement is approved, and are not required to submit a Proof of Claim Form in order to receive this benefit. Class members who do not have a Liberty National cancer policy currently in force will not receive this pooling benefit.

(4) All Class Members who qualify under paragraphs II-10 and II-11 of the Stipulation and who were named insureds under new policies under which any benefit claim has previously been submitted for cancer treatment administered to a covered person, will, if such treatment included radiation, chemotherapy, prescription chemotherapy drugs, or out-of-hospital prescription drugs prescribed in connection with cancer, receive full restitution of any amount by

which the total of all benefits *which would have been received* by the Class Member as a result of the cancer treatment *under the old policy* (had the old policy stayed in force) would have exceeded the amount *actually paid* to (or to the assignee of) the named insured Class Member under the new policy. Class Members must submit a true and proper Proof of Claim Form (and must be eligible under paragraph II-10 of the Stipulation) to be considered eligible for this benefit. If you have submitted a benefit claim to Liberty National for cancer treatment regarding any covered person under your new policy since August 29, 1986, you should read the Proof of Claim Form enclosed [see p. 9, below], and follow the instructions on the Proof of Claim Form carefully. Proof of Claim Forms must be submitted no later than December 20, 1993. You do not waive your right to object to or appeal this Settlement by filing a Proof of Claim Form

(5) Class members who qualify under paragraph II-12 of the Stipulation and who were named insureds under a new policy and who have, since August 29, 1986, heretofore submitted benefit claims for radiation, chemotherapy, prescription chemotherapy drugs, or incurred expenses for out-of-hospital prescription drugs prescribed in connection with the treatment of cancer for any covered person under their new policy, and who otherwise qualify under the terms of the Stipulation and the instructions contained in the Proof of Claim Form, shall share in an Incidental Monetary Relief Fund of \$1,000,000.00 and/or an Extracontractual Monetary Relief Fund of \$3,000,000.00. You should consult paragraphs II-9, II-10, II-11, and II-12 of the enclosed Stipulation for eligibility to share

in these funds. You will not share in these funds unless you submit the enclosed Proof of Claim Form on or before December 20, 1993 and are eligible under the Stipulation to do so. Persons who are not Class Members will not share in these funds.

(6) If you are a Class Member who qualifies under paragraph II-6 of the Stipulation and you are a named insured under a Liberty National cancer policy currently in force, Liberty National will be prohibited by the Court from denying - on the basis of any monetary limits upon or exclusions of such benefits currently appearing in your new policy - any otherwise valid future benefit claims by you for radiation, chemotherapy, prescription chemotherapy drugs, and out-of-hospital prescription drugs administered to any covered person in connection with the treatment of cancer, so long as your current policy is kept in force and all premiums are paid. Named Insured Class Members who qualify under paragraph II-6 of the Stipulation will receive this benefit of this paragraph automatically if the Settlement is approved, and do not need to submit a Proof of Claim Form to receive this benefit.

(7) *Class Members Insured Under Old Policies Which Lapsed After August 29, 1986 May Reinstate Policies.* Pursuant to the injunction to be entered by the Circuit Court against Liberty National, and subject to the terms and conditions of paragraph II-5 of the Stipulation, Class Members who were named insureds under an old cancer policy which was (i) in effect (or in the grace period) as of August 29, 1986, and (ii) which was originally issued by Liberty National, and

(iii) which provided for benefits without monetary limits for radiation, chemotherapy, prescription chemotherapy drugs and/or other out-of-hospital prescription drugs, and (iv) which lapsed *after* August 29, 1986 (but was not replaced by a new policy within 30 days), shall have the option to reinstate his/her old policy, on a prospective basis only, without regard to insurability, at the current 1993 initial premium rate, based on such Class Member's age on the date the old policy was originally issued. Current 1993 premium rates will not be increased prior to January 1, 1995. Premiums for the reinstated policy will be charged on a prospective basis only, and coverage under the reinstated policy will be on a prospective basis only. This option may be exercised by delivering a written request for reinstatement to: Thomas E. Hamby, Vice President, Liberty National Life Insurance Company, P.O. Box 2612, Birmingham, Alabama 35202. This option will expire if not exercised on or before January 1, 1995. If the option is exercised, reinstatement shall be effective only upon final approval of the Settlement (and final binding affirmance in the event of appeal) and upon receipt of the applicable premium. Liberty National shall be enjoined to reinstate the policy of any Class Member who requests and qualifies for reinstatement under the Stipulation, subject to the terms and conditions of the Stipulation. Any such reinstatement shall result in the cancellation of any new policy of such Class Member purchased while the Class Member was in lapsed status as to the old policy, and its replacement by the reinstated old policy on the

terms provided in paragraph II-5 of the Stipulation. Upon the lapse for non-payment of premiums or cancellation by the Named Insured of any policy reinstated under paragraph II-5 of the Stipulation, Liberty National shall have no further obligation under the Settlement as to the lapsed policy or persons insured thereunder.

The foregoing list of benefits under the Settlement is NOT complete and does NOT list all of the terms and conditions contained in Stipulation. You should read the Stipulation for complete details regarding the terms of the Settlement. The Stipulation shall govern implementation and enforcement of the Settlement, and nothing in this Notice varies the terms of the Stipulation.

IV. DISMISSAL OF THE ACTION AND RELEASE OF CLAIMS

The Stipulation (Exhibit 1) [See page 19, below] provides, among other things, that, if the Settlement is approved by the Court, the relief then provided in the Settlement shall be the exclusive relief for any class member. If the Settlement is approved, this litigation and any and all claims asserted or which could have been asserted by or on behalf of any class member regarding the alleged cancer exchange programs or the Released Claims (as defined in Section III of the Stipulation) shall be dismissed in their entirety on the merits, and with prejudice. Effective upon the final approval of all aspects of this Settlement by the Circuit Court of Barbour County, Alabama, and the final, binding affirmance of said approval in the event of any appeal. Named Plaintiff, individually and on behalf of the Class, and each Class

Member, separately and severally, shall be deemed to have fully, finally, and forever released Liberty National and each of its past, present, and/or future: parents, subsidiaries, affiliated and related entities and persons, officers, employees, directors, shareholders, agents, successors, and assigns, separately and severally, of and from all claims, causes of action and liabilities (known or unknown) which have been or could be asserted by any Class Member, whether arising under state or federal statutory or common law, to the extent such claims, causes of action or liabilities arise from, are connected with, or are in any way based upon or related to any allegation of fraud, misrepresentation, concealment, failure to disclose, or other tortious conduct or breach of duty which occurred in whole or in part on or before the date of this Settlement Agreement, regarding (1) the alleged cancer policy exchange programs, or (2) any other transaction resulting in the issuance of a new policy providing coverage for a Class Member previously insured under an old policy, or (3) the failure to offer any Class Member a new policy (the "Released Claims").

If the Settlement of this class action pursuant to the Stipulation is approved, the Court will, pursuant to the Stipulation, enter an order barring and enjoining the parties, including each and all class members, either directly, individually, representatively, or in any other capacity, from instituting, filing, prosecuting or participating as a litigant (by intervention or otherwise) in any other action asserting or relating the alleged cancer exchange programs or any of the claims that are to be released under this Settlement. The Settlement, if approved, will be final and binding upon all members of the class. PROVIDED,

HOWEVER, THAT IF YOU WERE A NAMED PLAINTIFF IN ANY SEPARATE LAWSUIT FILED ON OR BEFORE MARCH 10, 1993 WHICH ALLEGED FRAUD, CONCEALMENT, FAILURE TO DISCLOSE OR MISREPRESENTATION IN CONNECTION WITH THE PURCHASE, SALE, ISSUANCE, EXCHANGE OR REPLACEMENT OF ANY ONE OR MORE LIBERTY NATIONAL CANCER POLICIES, THEN YOU ARE NOT A MEMBER OF THE CLASS AND YOUR INDIVIDUAL CLAIMS WILL NOT BE RELEASED, DISMISSED, OR OTHERWISE AFFECTED BY THIS LITIGATION, AND YOU WILL NOT BE ENTITLED TO ANY OF THE BENEFITS OF THIS SETTLEMENT (UNLESS YOUR LAWSUIT HAS BEEN VOLUNTARILY DISMISSED WITHOUT PREJUDICE ON OR BEFORE THE DATE THE SETTLEMENT IS FINALLY APPROVED BY THE CIRCUIT COURT).

V. ATTORNEYS' FEES AND EXPENSES, AND EXPERT AND CONSULTANT FEES AND EXPENSES

Counsel for Named Plaintiff and the Class intend to apply to the Court for a total award of attorneys' fees in an amount not to exceed \$4,500,000.00 and expenses in an amount not to exceed \$35,000.00, and an additional award of fees for experts and consultants employed by Class Counsel in an amount not to exceed \$150,000.00. The Court is NOT obligated to award the amount requested by Class Counsel. The Court is free to award whatever lesser amount the Court deems fit. However, under the terms of the Stipulation, the attorneys' fee award cannot exceed the total sum of \$4,500,000.00, and the award of expenses cannot exceed \$35,000.00, plus an

additional award of fees for experts and consultants employed by Class Counsel which cannot exceed \$150,000.00. Defendant Liberty National will not oppose an award of attorneys' fees not in excess of \$4,500,000.00 and expenses not in excess of \$35,000.00 nor additional fees not in excess of \$150,000.00 for experts and consultants employed by Class Counsel, which fees and expenses will be paid by Liberty National if and to the extent approved by the Court.

VI. CERTAIN OF THE CONDITIONS OF THE SETTLEMENT

The obligations of the parties under the Stipulation are conditioned on the entry of a Final Judgment approving the Stipulation of Settlement and dismissing with prejudice the litigation and all claims asserted or which could have been asserted by or on behalf of any Class Member relating to the alleged cancer policy exchange programs or to the Released Claims (as defined in Section III of the Stipulation). Other conditions of the Settlement are set forth in the enclosed Stipulation. In the event that the Stipulation and the Settlement are not approved by the Court, or if any such approval is not affirmed in the event of appeal, or if any condition of the Settlement is not met, or if the Settlement does not become effective for any reason whatsoever, or if the litigation is not dismissed in its entirety with prejudice and without taxable costs, then the Stipulation, the Settlement provided for in the Stipulation (including any modification thereto made with the consent of the named parties), the obligations of Liberty National under the Settlement, and any actions taken in connection therewith, will be terminated and

will become void and have no further force and effect except for the obligation of Liberty National to pay for any expense incurred in connection with this Notice.

VII. RIGHT TO APPEAR

At the Settlement Hearing on November 4, 1993 at 9:00 a.m., any member of the Class who objects to the terms and conditions of the Stipulation; to the fairness, reasonableness or adequacy of the Settlement; to the maintenance of the action, for purposes of settlement, as a class action pursuant to Rule 23(b)(2) of the Alabama Rules of Civil Procedure; to the procedures adopted by the court for approval of the Settlement; to the binding effect of the Settlement on all members of the class; to the judgment to be entered; to any findings or orders of the Court; to the contents and method of delivery of this Notice; to the award of attorneys' fees requested by the Named Plaintiff and his counsel; to the provisions in the Settlement that any settlement proceeds or restitution determined to be due shall be paid to the Named Insured on the policy in force at the time of the treatment at issue, regardless of which Covered Person under the policy received the treatment at issue; or to any other matter pertaining to this proposed Settlement, may appear in person or by his attorney and present any evidence that may be proper and relevant. PROVIDED, HOWEVER, THAT NO CLASS MEMBER (OTHER THAN NAMED PLAINTIFF) SHALL BE HEARD, AND NO PAPERS, BRIEFS, PLEADINGS OR OTHER DOCUMENTS SUBMITTED BY SUCH CLASS MEMBER SHALL BE RECEIVED OR CONSIDERED BY THE COURT (UNLESS

THE COURT IN ITS DISCRETION SHALL OTHERWISE DIRECT, UPON APPLICATION OF SUCH CLASS MEMBER AND FOR GOOD CAUSE SHOWN), UNLESS NO LATER THAN OCTOBER 10, 1993 THE CLASS MEMBER FILES WITH THE CLERK OF THE CIRCUIT COURT OF BARBOUR COUNTY, ALABAMA THE FOLLOWING: (i) a notice of intention to appear; (ii) a short plain statement of such person's objections to any matter before the court; and (iii) a short, plain statement of the grounds of objection and any reasons for such persons desiring to appear and be heard, as well as a copy of all briefs, supporting papers, documents and writings which such Class Member desires the Court to consider. Any such written notice and objection, as well as any briefs, supporting papers or other documents thus filed by any Class Member shall also be served by such Class Member upon each of the following counsel of record at least ten (10) days prior to the date of the Settlement Hearing:

Jere Beasley
 Counsel for named plaintiff and the class
 Beasley, Wilson
 P.O. Box 4160
 Montgomery, Alabama 36103-4160

James W. Gewin
 Counsel for Defendant Liberty National
 Life Insurance
 Bradley, Arant, Rose & White
 1400 Park Place Tower
 Birmingham, Alabama 35203

Unless the Court otherwise directs, no member of the Class shall be entitled to object to or otherwise be heard with respect to the approval of the Stipulation; the fairness, reasonableness and adequacy of the Settlement; the

maintenance of the action as a class action pursuant to Alabama Rule of Civil procedure 23(b)(2); the contents or method of delivery of the notice; any orders or findings entered by the Court; the procedures adopted by the Court for consideration or approval of the Settlement; the binding effect of the Settlement on the members of the Class; any judgment to be entered; or the award of attorneys' fees and expenses to Named Plaintiff's counsel; or any other matter pertaining to the approval or disapproval of the Settlement, except by serving and filing written objections as prescribed above. Any Class Member who fails to object in the manner prescribed above shall be deemed to have waived all such objections and any other objections relating to the subject matter of the litigation or the Settlement, and shall be barred forever from raising such objections or relitigating his individual claims in this or any other action or proceeding.

VIII. ORDER BARRING FURTHER LITIGATION PENDING FINAL APPROVAL OR DISAPPROVAL OF SETTLEMENT

Pending final determination of whether the Settlement of this action pursuant to the Stipulation is fair, reasonable and adequate and should be approved, the Court has ordered that Named Plaintiff, and all members of the Class described above, are enjoined and prohibited from prosecuting, filing, maintaining, pursuing, or participating as a litigant (by intervention or otherwise), either directly, individually, or representatively, or in any other capacity, any separate action asserting any claims which are or relate to the Released Claims as defined in Section III of the Stipulation.

IX. SCOPE OF THIS NOTICE

The foregoing description of the Settlement Hearing, the litigation, the class determination, the terms of the Settlement, and other matters described herein, does not purport to be exhaustive or comprehensive. Accordingly, Class Members are referred to the attached Stipulation, and to the other documents filed with the Court in the Litigation, all of which may be examined by you or your attorney during regular business hours of each business day at the offices of the Clerk of the Circuit Court of Barbour County, Alabama, Barbour County Courthouse, Court Square, Clayton, Alabama. Additional copies of this notice are available from Class Counsel upon written request directed to the Special Master, [name and address]

This notice issued by order of the Court.

WILLIAM H. ROBERTSON
Circuit Judge

DATED:

June 16, 1993

NOTE: THE PAGES WHICH FOLLOW CONTAIN THE FOLLOWING DOCUMENTS WHICH THE CIRCUIT COURT OF BARBOUR COUNTY, ALABAMA HAS ORDERED TO BE DELIVERED TO YOU AS ATTACHMENTS TO THE FOREGOING NOTICE:

PROOF OF CLAIM FORM pp. 9-14

ORDER WITH RESPECT TO PROPOSED SETTLEMENT pp. 15-18

STIPULATION AND AGREEMENT OF COMPROMISE AND SETTLEMENT ("STIPULATION") pp. 19-28

ORDER AND FINAL JUDGMENT [PROPOSED] pp. 29-31

PROOF OF CLAIM FORM FO2 POSSIBLE REIMBURSEMENT OF CERTAIN CANCER CLAIMS PURSUANT TO CLASS ACTION SETTLEMENT

NOTICE: PLEASE READ THE NOTICE AND STIPULATION ENCLOSED BEFORE SUBMITTING THIS FORM. THE CIRCUIT COURT OF BARBOUR COUNTY, ALABAMA HAS DIRECTED THAT THIS CLAIM FORM BE DELIVERED TO YOU PURSUANT TO A CLASS ACTION SETTLEMENT DESCRIBED IN THE NOTICE AND THE STIPULATION ENCLOSED HEREWITH, THE INFORMATION REQUESTED IN THIS FORM WILL HELP THE COURT TO DETERMINE IF YOU ARE ENTITLED TO CERTAIN BENEFITS UNDER THE CLASS SETTLEMENT IF THE SETTLEMENT IS APPROVED BY THE COURT.

YOU DO NOT WAIVE YOUR RIGHT TO OBJECT TO THE SETTLEMENT OR TO APPEAL FROM ANY FINAL ORDER APPROVING THE SETTLEMENT BY SUBMITTING THIS FORM. IF THE SETTLEMENT IS NOT APPROVED, YOUR RIGHTS WILL NOT BE PREJUDICED BY THE FILING OF THIS FORM. IF THE SETTLEMENT IS APPROVED, ONLY PERSONS WHO SUBMIT THIS FORM AND WHO ALSO QUALIFY UNDER THE TERMS OF THE SETTLEMENT WILL BE ELIGIBLE TO RECEIVE CERTAIN BENEFITS UNDER THE SETTLEMENT, THE BENEFITS AND ELIGIBILITY REQUIREMENTS ARE FULLY EXPLAINED IN THE STIPULATION WHICH IS ATTACHED.

DEFINITION

The following words or phrases, whenever they appear in this Proof of Claim Form, shall have the following meaning ascribed to them, and the singular includes the plural, and the plural the singular:

1. "Old Policy" and "Old Cancer Policy" shall mean any cancer insurance policy or policies issued by Liberty National Life Insurance Company ("Liberty National") which (i) contained no monetary limits or exclusions of benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs, and (ii) which was issued prior to August 29, 1986.

2. "New Policy" and "New Cancer Policy" shall mean any cancer insurance policy or policies issued by Liberty National on or after August 29, 1986 which contained monetary limits upon or exclusions of benefits for otherwise covered radiation, chemotherapy, and prescription chemotherapy drugs and provided no benefits or coverage for other out-of-hospital prescription drugs.

3. "Class" shall mean the Class certified by the Barbour County Circuit Court as described on page 1 of the enclosed Notice, and "Class members" means persons who are members of that "Class".

4. "Named Insured" or "policyholder" shall mean the person listed as "insured" on the face of the policy, and to whom benefits under the policy for the treatment of persons covered under the policy are payable by the terms of the policy.

5. "Covered persons" shall mean dependents of the named insured who are covered persons within the meaning of the applicable policy.

6. "Other out-of-hospital prescription drugs" or "other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer" shall mean all prescription drugs, other than prescription chemotherapy drugs, prescribed for any covered person with a diagnosis of cancer for use outside of a hospital in the (i) treatment of cancer, or (ii) treatment of the effects of cancer or of cancer treatment.

INSTRUCTIONS: Class Members are entitled to submit this claim form *only if*

(1) you at one time owned or were insured under an old policy of cancer insurance issued by Liberty National Life Insurance Company on or before August 29, 1986; and

(2) you thereafter were a named insured under a new policy of cancer insurance issued by Liberty National Life Insurance Company after August 29, 1986; and

(3) you or someone insured under your new policy has in the past been diagnosed as having cancer; and

(4) since August 29, 1986 you have submitted to Liberty National one or more claims under your new policy for radiation treatment, chemotherapy treatment, prescription chemotherapy drugs, or out-of-hospital prescription drugs administered to a covered person under your new policy in connection with the treatment of cancer; and

(5) Liberty National did *not* pay the full amount of the expenses incurred since August 29, 1986 for radiation treatment, chemotherapy, prescription chemotherapy drugs, or out-of-hospital prescription drugs administered to a covered person under your new policy in connection with the treatment of cancer.

IF YOU FIT THE ABOVE DESCRIPTION OF PERSONS ENTITLED TO SUBMIT THIS CLAIM FORM, YOU MUST SUBMIT THIS CLAIM FORM ON OR BEFORE DECEMBER 20, 1993. IF YOU DO NOT SUBMIT THIS CLAIM FORM BY THAT DATE, YOU WILL NOT BE ELIGIBLE FOR ANY OF THE MONETARY BENEFITS OF THE SETTLEMENT DESCRIBED IN PARAGRAPHS II-9, II-10, II-11, AND II-12 OF THE ENCLOSED "STIPULATION AND AGREEMENT OF COMPROMISE AND SETTLEMENT" ("STIPULATION"). YOU WILL REMAIN ELIGIBLE FOR THE NON-MONETARY BENEFITS OF THE SETTLEMENT WHETHER OR NOT YOU SUBMIT THIS FORM.

IF YOU SUBMIT THIS FORM, YOU MUST ATTACH COPIES OF MEDICAL BILLS OR OTHER DOCUMENTS SUFFICIENT TO SHOW THE COST AND DATE OF EACH RADIATION TREATMENT, CHEMOTHERAPY TREATMENT, PRESCRIPTION CHEMOTHERAPY DRUG EXPENSE, AND OUT-OF-HOSPITAL DRUG EXPENSE WHICH YOU CLAIM WAS NOT FULLY PAID BY LIBERTY NATIONAL LIFE INSURANCE COMPANY.

IF YOU ARE OR WERE THE ADMINISTRATOR OR EXECUTOR OF A CLASS MEMBER WHO IS DECEASED BUT WHO OTHERWISE WOULD BE ENTITLED TO SUBMIT THIS PROOF OF CLAIM FORM UNDER

INSTRUCTIONS (1) THROUGH (5) ABOVE, PLEASE READ PARAGRAPH II-13 OF THE ENCLOSED STIPULATION FOR FURTHER INSTRUCTIONS.

If you submit this form, you will be notified at a later date of the initial determination as to whether you are entitled to any monetary benefits under the Settlement. ANY MONETARY BENEFITS PAYABLE UNDER THE SETTLEMENT WILL BE PAID TO THE PERSON LISTED AS THE NAMED INSURED (THE POLICY OWNER) ON THE POLICY IN FORCE AT THE TIME OF THE CANCER TREATMENT AT ISSUE.

Your entitlement to benefits will be determined in accordance with the terms of a Class Action Settlement (the "Stipulation"), a copy of which is enclosed, and additional copies of which may be reviewed during regular business hours at the Office of the Clerk of the Circuit Court of Barbour County, Alabama, located in Clayton, Alabama. IF YOU DO NOT SUBMIT THIS FORM BEFORE DECEMBER 20, 1993 YOU WILL NOT BE ELIGIBLE FOR MONETARY BENEFITS UNDER THE SETTLEMENT. PERSONS WHO SUBMIT THIS FORM BUT ARE NOT MEMBERS OF THE CLASS, OR WHO ARE NOT "ENTITLED TO SUBMIT THIS FORM" AS DESCRIBED IN INSTRUCTIONS (1) THROUGH (5) ABOVE, WILL NOT BE ELIGIBLE FOR MONETARY BENEFITS UNDER THE SETTLEMENT.

PLEASE PROVIDE THE FOLLOWING INFORMATION:

1. State whether you were *ever* insured under a policy of cancer insurance issued by Liberty National Life Insurance *before* August 29, 1986.

Yes No
 Policy number (if known): _____
 Named Insured (Policy Owner) _____

2. State whether you are or were the named insured under a policy of cancer insurance issued by Liberty National Life Insurance Company *after* August 29, 1986.

Yes No
 Policy number (if known): _____
 Named Insured (Policy Owner) _____

3. State whether you or any person(s) insured under a Liberty National cancer policy owned by you has received treatment for cancer since August 29, 1986.
 Yes No State the full names and dates of birth of each person covered by your policy who received cancer treatment since August 29, 1986:

4. State whether, after August 29, 1986, you submitted any bills to Liberty National for radiation treatment, chemotherapy treatment, or prescription chemotherapy drugs, or submitted any bills or incurred any expenses for other out-of-hospital prescription drugs prescribed to you or a covered person insured under your policy. Yes No

NOTE: If you answered "Yes" to questions 1, 2, 3 and 4 above, then provide the additional information requested below. If you answered "No" to *any one* of questions 1, 2, 3 and 4 above, you are not eligible for monetary benefits under the proposed settlement and therefore you should *not* complete the rest of this Proof of Claim Form

and you should not submit this Proof of Claim Form.

5. State whether Liberty National reimbursed you for the full amount of the bills submitted to Liberty National for radiation treatment, chemotherapy treatment, prescription chemotherapy drugs, and expenses incurred for other out-of-hospital prescription drugs administered to any covered person under your new policy in connection with the treatment of cancer since August 29, 1986? Yes No

NOTE: If you answered "yes" to question 5, then you are not eligible for monetary benefits under the proposed Settlement and therefore you should *not* complete the rest of this Proof of Claim Form and you should *not* submit this Proof of Claim Form. If you answered "No" to question 5, then please provide the additional information requested below:

6. **NOTE: THE INFORMATION REQUESTED IN ITEM 6 WILL NOT REDUCE ANY BENEFITS TO WHICH YOU MAY BE ENTITLED UNDER THE SETTLEMENT, BUT MAY BE USED TO VERIFY DATES AND TYPES OF TREATMENT IN CONNECTION WITH YOUR CLAIM.** To assist Liberty National in obtaining any additional information that may be necessary concerning this claim, please state the name of all insurance companies (other than Liberty National) and other health insurance or health care plans (including any employer-sponsored health benefit plans) who paid for any portion of the cancer treatment received *by you or by any person insured under your policy:*

7. Please fill out the table on the following page to show the bills submitted to Liberty National since August 29, 1986 for radiation treatment, chemotherapy treatment, and prescription chemotherapy drugs, and bills submitted or expenses incurred since August 29, 1986 for out-of-hospital prescription drugs. You should list this information for each person insured under your policy who has received treatment for cancer. YOU SHOULD LIST ONLY THOSE ITEMS FOR WHICH YOU CONTEND YOU HAVE NOT ALREADY BEEN FULLY REIMBURSED BY LIBERTY NATIONAL.

NOTE: IF YOU SUBMIT THIS FORM, YOU MUST ATTACH COPIES OF BILLS, INVOICES OR OTHER DOCUMENTS WHICH VERIFY THAT YOU RECEIVED THE TREATMENT OR DRUGS INDICATED. IF YOU DO NOT ALREADY HAVE COPIES, YOU SHOULD GET COPIES OF SUCH BILLS, INVOICES OR OTHER DOCUMENTS FROM THE DOCTORS, HOSPITALS, OR OTHER PROVIDERS WHO TREATED YOU OR BILLED YOU FOR THE LISTED TREATMENTS OR DRUGS. IF YOU RECEIVED ANY LETTER OR WRITTEN STATEMENT FROM LIBERTY NATIONAL REGARDING ANY OF THE TREATMENTS OR DRUG EXPENSES LISTED, PLEASE ATTACH COPIES OF THOSE DOCUMENTS AS WELL IF YOU STILL HAVE THEM.

Type of Expense or Treatment	Dates of Expense or Treatment (if any)	Amount Charged By Provider for Treatment	Name and Date of Birth of Person Treated	Portion Not Paid By Liberty National (if any)
A. Radiation				
B. Chemotherapy				
C. Prescription Chemotherapy Drugs				
D. Out-of-Hospital Prescription Drugs				

8. I HAVE READ THIS FORM AND I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT I HAVE COMPLETED THIS FORM TRUTHFULLY TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION. I HEREBY AUTHORIZE LIBERTY NATIONAL LIFE INSURANCE COMPANY TO OBTAIN COPIES OF ALL MEDICAL RECORDS PERTAINING TO THE CLAIMS MADE HEREIN FROM ANY INSURER OR PROVIDER OR PHYSICIAN HAVING SUCH RECORDS SO THAT MY CLAIM CAN BE VERIFIED.

Sign Your Name Here

Print Your Full Name

Your Maiden Name (if applicable)

Your Former Name (if you have divorced or remarried)

Print Your Address:

Your Date of Birth:

Your Social Security Number:

Other Addresses at Which You Have Resided Since August 29, 1986:

[NOTE: THE INSTRUCTIONS FOR MAILING THIS FORM AND CERTAIN ADDITIONAL INFORMATION APPEAR ON THE NEXT PAGE].

IMPORTANT: YOU MUST MAIL THIS FORM AND COPIES OF THE DOCUMENTS DESCRIBED IN ITEM 7 TO:

SPECIAL MASTER
P.O. BOX 1449
EUFAULA, AL 36072-1449

THE SPECIAL MASTER WILL THEN SUBMIT A COPY OF THE FORM TO LIBERTY NATIONAL LIFE INSURANCE COMPANY AND WILL FILE THE ORIGINAL OF THE CLAIM WITH THE CLERK OF THE CIRCUIT COURT OF BARBOUR COUNTY, ALABAMA. YOU WILL BE NOTIFIED IN WRITING OF LIBERTY NATIONAL'S PRELIMINARY DETERMINATION AS TO WHETHER YOU ARE ENTITLED TO PAYMENT OF ANY ADDITIONAL AMOUNTS PURSUANT TO THE SETTLEMENT OF THE CLASS ACTION DESCRIBED TO YOU IN THE NOTICE RECEIVED BY YOU FROM THE CLERK OF THE COURT. LIBERTY NATIONAL'S DETERMINATION WILL BE BINDING UPON YOU UNLESS YOU THEN REQUEST A SPECIAL HEARING IN WRITING ADDRESSED TO THE SPECIAL MASTER AT THE ADDRESS SHOWN ABOVE. YOU WILL HAVE THIRTY (30) DAYS TO REQUEST A SPECIAL HEARING, AND IF YOU DO SO YOU WILL HAVE AN OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF THIS CLAIM TO THE SPECIAL MASTER APPOINTED BY THE COURT TO RESOLVE THESE CLAIMS. YOU WILL BE NOTIFIED AT LEAST THIRTY (30) DAYS IN ADVANCE OF THE

DATE AND TIME OF THIS HEARING. IN THE EVENT OF ANY DISPUTE, THE RECOMMENDATION OF THE SPECIAL MASTER FOLLOWING SAID HEARING WILL BE SUBMITTED TO THE CIRCUIT COURT FOR REVIEW, AND THE COURT SHALL THEN MAKE A FINAL DECISION ON YOUR CLAIM. A CHECK FOR THE FINAL AMOUNT DETERMINED TO BE DUE TO YOU UNDER THE SETTLEMENT WILL BE MAILED TO YOU AT SUCH TIME AS THE COURT HAS DETERMINED ALL CLAIMS SUBMITTED PURSUANT TO THE SETTLEMENT. IF YOU ARE NOT SATISFIED WITH THE SPECIAL MASTER'S RULING, YOU WILL BE GIVEN NOTICE OF AN OPPORTUNITY TO REQUEST A SPECIAL HEARING BY THE COURT ON YOUR PROOF OF CLAIM AT THAT TIME. YOU MUST SUBMIT YOUR CLAIM FORM NO LATER THAN DECEMBER 20, 1993 OR YOUR CLAIM WILL BE WAIVED.

/s/
CIRCUIT CLERK

[NOTE: PLEASE DETACH THIS PROOF OF CLAIM FORM FROM BOOKLET BEFORE MAILING]

[NOTE: THIS ORDER WAS ENTERED BY THE CIRCUIT COURT OF BARBOUR COUNTY, ALABAMA ON JUNE 16, 1993.]

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON, for himself, and in his representative capacity for the class of persons described herein,)	
Plaintiffs,)	Case Number
vs.)	CV-92-021
LIBERTY NATIONAL LIFE INSURANCE COMPANY,)	
Defendant.)	

ORDER WITH RESPECT TO
PROPOSED SETTLEMENT

(Filed June 16, 1993)

The parties to the above-captioned action having applied for an Order determining certain matters in connection with a proposed settlement in accordance with the Stipulation and Agreement of Compromise and Settlement ("the Stipulation" or "the Settlement"), and the Court having heretofore entered an order certifying this action as a Class Action;

NOW, upon the motion of the parties, after consideration of the Stipulation (Exhibit 1 hereto) and the exhibits

annexed thereto, and after due deliberation, and consideration of the totality of the circumstances and the record, and for good cause shown, it is hereby

ORDERED, that:

1. The terms of the Settlement are preliminary [sic] approved, subject to further consideration thereof at the Settlement hearing described below. The parties shall have twenty (20) days to make any modifications or corrections to the Stipulation or its exhibits which they mutually agree to be necessary, subject to further approval of the Court. Thereafter, modifications shall not be permitted except by mutual agreement by leave of Court with good cause shown.

2. The Court hereby reaffirms that this action shall be maintained as a Class Action pursuant to *Alabama Rule of Civil Procedure 23(b)(2)*, by the Named Plaintiff as Class Representative and by the Named Plaintiff's counsel as Class Counsel, on behalf of a Class consisting of the following:

"All persons who now or in the past were insured under any cancer policy which (1) was issued by Liberty National Life Insurance Company ("Liberty National") on or before August 29, 1986, and (2) which provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs without monetary limits, and (3) was paid and in force (or in the grace period) on or after August 29, 1986, regardless of whether such policy remains in force, thereafter lapsed or was replaced by a different Liberty National cancer policy after that date; *provided, however, that* (i) any individual insured who is or was a

named plaintiff in any separate lawsuit against Liberty National which was filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies is excluded from the Class *unless* such lawsuit has been voluntarily dismissed without prejudice on or before the date this Settlement is finally approved by the Circuit Court of Barbour County, Alabama; (ii) any individual insured whose "old policy" lapsed prior to August 29, 1986 and was not thereafter reinstated (after payment by the insured of all delinquent premiums) by Liberty National is excluded from the Class; and (iii) any insured whose first Liberty National cancer policy was a new policy form issued after August 29, 1986 is excluded from the Class."

The description of the Class described herein shall clarify and relate back to the date of the prior Class certification order heretofore entered by the Court.

3. The Court finds for the purposes of settlement that the Named Plaintiff and Class Counsel are adequate representatives of and Counsel for the Class respectively, and that all requirements of A.R.C.P. 23(a) and 23(b)(2) are met. The Court expressly funds [sic], for purposes of these Settlement proceedings, that the Class is so numerous that the joinder of all members is impractical; that Class Counsel is experienced and has adequately represented and will adequately represent the Class; that there are questions of law and fact common to the Class; the claims of Named Plaintiff are typical of the claims of

the Class; that Named Plaintiff is an adequate representative of the Class; and that the representative parties have fairly and adequately protected the interests of the Class and will continue to do so. The Court finds that maintenance of this action as a Class Action pursuant to the Ala.R.Civ.P. 23(b)(2) is superior to any other means of adjudicating the claims herein raised. The Court further finds, for purposes of these Settlement proceedings, that Defendant's alleged conduct is generally applicable to the Class, thereby making appropriate injunctive and equitable relief with respect to the Class as a whole. The Court further finds, for purposes of these Settlement proceedings, that maintenance of this action pursuant to Rule 23(b)(2) is superior to maintenance of this action pursuant to *Alabama Rule of Civil Procedure 23(b)(3)*, in that the vast majority of Class Members have not suffered cancer and have incurred little or no actual monetary damage as a result of the matters made the basis of the complaint. Moreover, the primary relief justified by the conduct alleged and the primary relief under the Settlement is injunctive relief whereby the Defendant would be enjoined from enforcing certain policy limitations, to effect a reformation of certain policies, and to make restitution and other monetary relief available to certain Class Members incidental to the primary equitable relief. The Court finds that all monetary relief provided by the Settlement is secondary and incidental to the primary injunctive and equitable relief. In these circumstances, the Courts [sic] finds that certification pursuant to Rule 23(b)(2) would best facilitate the provision of maximum relief to the entire Class as a whole, including those who have suffered no damage or purely speculative damage at

the present time but could otherwise arguably suffer damage in the future.

4. A hearing shall be held on November 4, 1993 at 9:00 a.m. at the Barbour County Courthouse in Clayton, Alabama. The purposes of the hearing shall be (a) to determine whether the proposed Settlement on the terms and conditions of the Stipulation is fair, reasonable, and adequate and ~~should~~ be approved by the Court; (b) to determine whether Final Judgment should be entered in this action pursuant to the proposed Settlement; (c) to entertain any objections of any affected person(s) as to the certification of the Class, the proposed Settlement, or any other matter related thereto; and (d) to rule on all other matters pertaining to the proposed Settlement and such other matters as the Court may deem appropriate.

5. The Court reserves the right to adjourn the hearing without further notice of any kind other than oral announcement at the hearing.

6. The Court reserves the right following the hearing to approve the Settlement with or without modification and with or without further notice of any kind.

7. Liberty National shall use its best efforts to cause notice to be given to all persons identified as members of the Class, in accordance with this Order, as follows:

a. Not later than sixty (60) days after the entry of this Order, mail (by first class mail, postage prepaid) a Notice of Hearing and Settlement substantially in the form of Exhibit B to the Stipulation (the "notice") to each of the following persons whose identities and last known

addresses are reasonably ascertainable from Liberty National's records; all persons listed as the named insured on Liberty National cancer insurance policies which are presently in force; all persons who were listed as the named insured on Liberty National cancer policies which were issued prior to August 29, 1986 and which were in force or in the grace period as of that date; and all persons who are listed as the named insured under each "new policy" (as that term is defined in the Stipulation) pursuant to which any claim for radiation, chemotherapy, prescription chemotherapy drugs, or out-of-hospital prescription drugs prescribed in the treatment of cancer has been submitted (to Liberty National) since August 29, 1986. Provided, however, that Liberty National need not send notice to any such person whom Liberty National can identify from its records as being a person who is not a member of the Class. The notice shall include a copy of the Stipulation, as well as a copy of this Order, the proof of claim form contemplated by the Stipulation and a copy of the proposed Order and Final Judgment attached as Exhibit E to the Stipulation.

b. With respect to any notices which are returned by the postal service undelivered, Liberty National shall use its best efforts to identify the present address of the intended recipient and to mail or personally deliver notice to each such individual no later than thirty (30) days in advance than [sic] the fairness hearing.

c. Not later than seventy-five (75) days after the entry of this Order, Liberty National shall cause to be published in the legal notices section of the following newspapers: *Clayton*

Record, Clayton, Alabama; *Eufaula Tribune*, Eufaula, Alabama; *Union Springs Herald*, Union Springs, Alabama; *Mobile Press Register*, Mobile, Alabama; *Montgomery Advertiser/Journal*, Montgomery, Alabama; *Birmingham News*, Birmingham, Alabama; *Huntsville Times*, Huntsville, Alabama; *Dothan Eagle*, Dothan, Alabama; *Anniston Star*, Anniston, Alabama; and *USA Today*, and at least one major newspaper (within the top three in circulation) in each other State in which Liberty National cancer policies are approved for issuance a one-time summary notice of the hearing and Settlement, substantially in the form attached hereto as Exhibit B-1, including the name and address of Class Counsel from whom copies of the notice can be obtained upon request;

d. At least 7 days prior to the hearing, Liberty National and Class Counsel shall file or cause to be filed a proof of distribution of the notice in accordance with this paragraph 7. Said proof shall be in the form of affidavits executed by an appropriate representative of Liberty National and by Class Counsel verifying their compliance with the provisions of this paragraph 7.

8. The Court finds that the form and method of notice specified herein is the best notice practicable under the circumstances, and, if carried out, shall constitute due and sufficient notice of the Settlement and all other matters addressed in the notice and its exhibits, including without limitation, the pendency of this action, the maintenance of this action as a Class Action pursuant to Alabama Rule of Civil Procedure 23 (b) (2), the terms of Settlement, the binding effect of the Settlement on all

members of the Class, and the hearing, to all persons entitled to receive such notice. The notice attached as Exhibit B to the Stipulation is hereby approved.

9. Any briefs or other documents in support of the Settlement and in support of Named Plaintiff's request for an award of attorneys' fees and expenses shall be filed by the parties with the Clerk of the Court not less than 3 days prior to the Settlement hearing.

10. Any member of the Class may appear at the hearing, in person or by counsel (if an appearance is filed and served as hereinafter provided), and be heard to the extent allowed by the Court in support of, or in opposition to the fairness, reasonableness and adequacy of the Settlement, the terms and conditions of the Settlement, the Final Judgment to be entered herein, the procedures adopted by the Court for its determination of whether to approve the Settlement, including but not limited to, maintenance of the action pursuant to *Alabama Rule of Civil Procedure 23(b)(2)*, the binding effect of the Settlement on all members of the Class, the content and method of delivery of the notice, any orders or findings entered by the Court, Class Counsel's request for an award of attorneys' fees and expenses, and all other matters pertaining to this proposed Settlement. PROVIDED, HOWEVER, THAT NO CLASS MEMBER SHALL BE HEARD OR ENTITLED TO CONTEST SUCH MATTERS UNLESS THAT CLASS MEMBER HAS SERVED, NOT LESS THAN 10 DAYS BEFORE THE HEARING, BY HAND DELIVERY OR FIRST CLASS MAIL, POSTAGE PREPAID, WRITTEN OBJECTIONS AND COPIES OF ANY SUPPORTING PAPERS AND BRIEFS (WHICH

MUST CONTAIN PROOF OF MEMBERSHIP IN THE CLASS) UPON THE FOLLOWING COUNSEL:

Designated recipient for Named Plaintiff: Jere Beasley, Beasley, Wilson, Allen, Main & Crow P.C.
P.O. Box 4160, Montgomery, Alabama 36103-4160

Designated recipient for Defendant: James Gewin, Bradley, Arant, Rose & White
1400 Park Place Tower, Birmingham, Alabama 35203

AND UNLESS THAT CLASS MEMBER HAS ALSO FILED SUCH OBJECTION, PAPERS AND BRIEFS, SHOWING DUE PROOF OF SERVICE UPON NAMED PLAINTIFF'S DESIGNATED RECIPIENT AND DEFENDANT'S DESIGNATED RECIPIENT, WITH THE CLERK OF THE CIRCUIT COURT OF BARBOUR COUNTY, ALABAMA, CLAYTON, ALABAMA, COURTHOUSE, COURT SQUARE, CLAYTON, ALABAMA 36016 ON OR BEFORE OCTOBER 10, 1993. NO PARTICULAR FORM OF WRITTEN OBJECTION IS REQUIRED. A SHORT, PLAIN STATEMENT OF EACH OBJECTION AND THE GROUNDS THEREFOR WILL BE SUFFICIENT. CLASS MEMBERS WHO WISH TO OBJECT MAY, BUT ARE NOT REQUIRED TO, OBTAIN COUNSEL AT THEIR OWN EXPENSE TO REPRESENT THEM IN CONNECTION WITH ANY SUCH OBJECTION. HANDWRITTEN OBJECTIONS WILL BE CONSIDERED.

11. Unless the Court otherwise directs, no member of the Class shall be entitled to be heard or object with respect to the fairness, reasonableness, or adequacy of the Settlement, the terms and conditions of the Settlement, any Final Judgment to be entered herein, the procedures adopted by the Court to consider approval of the Settlement, the binding effect of the Settlement on all members

of the Class, the maintenance to [sic] the action as a Class Action pursuant to Alabama Rule of Civil Procedure 23 (b) (2), the content and method of delivery of the notice, or any orders or findings entered by the Court, or any other matter pertaining to approval or disapproval of the Settlement, unless such Class Member shall have first served and filed written objection as prescribed above. Any Class Member who fails to object in the manner prescribed above shall be deemed to have waived all such objections and any other objections relating to the subject matter of the litigation, and shall be forever barred from raising such objections or relitigating his individual claims in those or any other action or proceeding. Each Class Member desiring to object must file his own objection and appear personally or by counsel. No Class Member will be heard to assert purported objections of any other Class Member.

12. Pending final determination of whether the Settlement should be approved, the Named Plaintiff and all members of the Class are hereby enjoined and prohibited from commencing or prosecuting any action, either directly, individually, representatively, or in any capacity, asserting any claims which are proposed to be released pursuant to this Settlement (Released Claims, as defined in Section III of the Stipulation). Provided, however, that this Order shall not restrict the prosecution of the individual claims of any person who was a named plaintiff in any suit filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies.

13. If the Settlement (including any modification thereto with the consent of the parties made as provided for in the Stipulation) is approved by the Court following the hearing, an Order and Final Judgment substantially in the form annexed to the Stipulation as Exhibit 2 may be entered: (i) approving the final certification of the Class described in paragraph 2 hereof; (ii) approving the Settlement and all transactions preparatory or incidental thereto and all terms and conditions of the stipulation as valid, fair, reasonable, and adequate, and directing consummation of the Settlement in accordance with the terms and provisions of the Stipulation; (iii) enters a final injunction and other declaratory and equitable relief permanently enjoining and requiring Liberty National to perform its obligations (including reformation of the new policies, ancillary restitution and the ancillary monetary relief) set forth in this Settlement Agreement (the "Injunction"), and subject to said Injunction and the right to enforcement thereof pursuant to the continuing jurisdiction reserved by the Court, approves the release of and dismisses with prejudice all claims asserted or which could have been asserted in this Litigation by or on behalf of the Class Members or any of them against the Defendant relating to the alleged cancer policy exchange programs or to the Released Claims as defined in Section III of the Stipulation; (iv) permanently barring and enjoining each and all Class Members from filing or participating as a litigant in any individual lawsuit or class action relating to the alleged cancer exchange programs or asserting any of the Released Claims (as defined in Section III of the Stipulation); and (v) reserving jurisdiction over all matters related to the administration,

consummation, interpretation, and enforcement of the Stipulation and Settlement.

14. Those Class Members who are described in paragraphs II-9, II-10, and II-12 of the Stipulation and who otherwise qualify thereunder for the restitution and ancillary monetary relief provided in those paragraphs must submit completed proof of claim forms to Class Counsel, in accordance with the instructions set forth on the proof of claim form, no later than December 20, 1993 (120 days after the deadline for the mailing of the notice described in paragraph 7(a) of this Order). This deadline must be complied with regardless of whether the person eligible to submit the proof of claim form objects to the Settlement. If the Settlement is not approved by this Court, or if the approval of the Settlement is set aside by an appellate court, a Class Member's submission of the proof of claim form shall in no way prejudice the rights of said Class Member in any subsequent litigation. If the Settlement is ultimately approved and affirmed in the event of any appeal, the restitution and ancillary monetary relief provided for in paragraphs II-9, II-10, and II-12 of the Stipulation shall be payable only to those persons who submit true and proper claim forms on or before December 20, 1993 and otherwise qualify for said relief under the terms of the Stipulation. The filing of a proof of claim form shall not waive or preclude the claimant's right to object to or appeal from this Settlement.

15. If the Settlement is not approved by the Court or shall not become effective for any reason whatsoever, then, and in that event, the Settlement proposed in the

Stipulation and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein) shall be terminated and shall become void and have no further force and effect except for Liberty National's obligation to pay for any expenses incurred in connection with the notice provided for by this Order, and incurred in the employment of an actuarial expert for Class Counsel.

DONE, ORDERED, ADJUDGED AND DECREED,
this 16th day of June, 1993.

/s/ William H. Robertson
CIRCUIT JUDGE

["Stipulation"]
[EXHIBIT 1
to Notice]

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON, for
himself, and in his representative
capacity for the class of persons
described herein,

Plaintiff,
vs.

LIBERTY NATIONAL LIFE
INSURANCE COMPANY,

Defendant.

Case Number:
CV-92-021

STIPULATION AND AGREEMENT OF COMPROMISE AND SETTLEMENT

The parties to the above-captioned civil action (the "Litigation"), Charlie Frank Robertson, for himself ("Named Plaintiff") and as Class Representative, and Liberty National Life Insurance Company ("Defendant"), for itself and both by and through their respective attorneys, have entered into the following Stipulation and Agreement of Compromise and Settlement (the "Stipulation" or the "Settlement") subject to the approval of the Court.

DEFINITIONS

The following words or phrases, whenever they appear in this Agreement, shall have the following meaning ascribed to them, and the singular includes the plural, and the plural the singular:

1. "Old Policy" and "Old Cancer Policy" shall mean any cancer insurance policy or policies issued by Liberty National Life Insurance Company ("Liberty National") which (i) contained no monetary limits or exclusions regarding benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs, and (ii) which was issued prior to August 29, 1986.

2. "New Policy" and "New Cancer Policy" shall mean any cancer insurance policy or policies issued by Liberty National on or after August 29, 1986 which contained monetary limits upon or exclusions of benefits for otherwise covered radiation, chemotherapy, and prescription chemotherapy drugs and provided no benefits or coverage for other out-of-hospital prescription drugs.

3. "Class" shall mean the Class certified by the Barbour County Circuit Court on March 10, 1993 as set forth in recital 11 below and as more fully defined in Section I below.

4. "Named Insured" or "policyholder" shall mean the person listed as "insured" on the face of the policy, and to whom benefits under the policy for the treatment of persons covered under the policy are payable by the terms of the policy.

5. "Covered Persons" shall mean dependents of Named Insured who are covered persons within the meaning of the applicable policy.

6. "Other out-of-hospital prescription drugs" or "other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer" shall mean all prescription drugs, other than prescription chemotherapy drugs, prescribed for any named insured or covered person with a diagnosis of cancer for use outside of a hospital in the (i) treatment of cancer, or (ii) treatment of the effects of cancer or of cancer treatment.

RECITALS

1. Liberty National is an insurance company which offers, in addition to other insurance products, policies of insurance providing benefits to policyholders and insureds who are diagnosed with cancer.

2. Liberty National had in force, prior to August 29, 1986, certain old cancer policies which, among other benefits, provided benefits payable without monetary limits

to named insureds for themselves and other covered persons under the policy for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs.

3. It is alleged in this action that beginning on or about August 29, 1986, and on other occasions thereafter, Liberty National instituted a program or programs to offer those customers having the old cancer policies the opportunity to replace their old cancer policies then in effect with one of several new cancer policies which contained monetary limits for otherwise covered radiation, chemotherapy and prescription chemotherapy drugs, and eliminated the benefit for other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer (the "alleged cancer policy exchange programs").

4. The new policies also provided certain new or enhanced benefits not provided by the old policy including, but not limited to, the following new benefits under one or more of the "new policy" forms: a "first occurrence" cash benefit payable to the named insured for each insured upon initial diagnosis of cancer; dread disease benefits; hospice benefits; benefits for prostheses; experimental treatment benefits; disability income benefits; and other new or enhanced benefits.

5. As of August 29, 1986, Liberty National discontinued the sale of old policies. Old policies issued prior to that date remained in force for those who already had such policies, but chose not to replace the old policy with the new policy, and continued to pay premiums on the old policy as and when due.

6. Under all old policies and new policies, all benefits payable for the treatment rendered to the named insured or any covered person are payable to the named insured under the policy, or to his assignee.

7. Charlie Frank Robertson ("Robertson"), prior to August 29, 1986, had purchased from Liberty National one of the old cancer policies described in recital 2 above, and was the named insured under said policy. After August 29, 1986, Robertson terminated his old policy and purchased one of the new policies to replace his old policy. Robertson was also the named insured under the new policy. Robertson has not been diagnosed with cancer and has made no claim for benefits under the new policy.

8. Robertson, on behalf of himself and the Class, contends that in the course of implementing the alleged cancer policy exchange programs, Liberty National misrepresented or failed to disclose material facts and, in particular, misrepresented the benefits afforded by the new policy and specifically failed to disclose the monetary limits imposed by the new policy upon benefits for radiation, chemotherapy and prescription chemotherapy drugs and the elimination of coverage for other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer, and failed to adequately inform policyholders that such coverages were provided without such monetary limits or exclusions (under their old policies).

9. Liberty National vigorously denies the allegations and contends that the new policies provided substantially greater overall coverage than the old policies

and that the new policies have paid substantially greater sums in overall benefits to a large majority of those who later were diagnosed with cancer.

10. Robertson filed suit on or about May 12, 1992, against Liberty National initially asserting claims arising from a life insurance policy issued by Liberty National. All claims arising out of or related to the life insurance policy have heretofore been settled in a separate agreement between Robertson and Liberty National which has no bearing on this settlement agreement.

11. On or about October 2, 1992, Robertson (the "Named Plaintiff" and the "Class Representative"), amended his complaint (against Liberty National) to assert on behalf of himself and a purported Class claims arising out of the alleged cancer policy exchange programs.

12. On March 10, 1993, over Liberty National's objection, the Circuit Court of Barbour County (the "Circuit Court" or the "Court") entered a class action certification order pursuant to Rule 23(b)(2), Alabama Rules of Civil Procedure, certifying a class consisting of:

"All past and present insureds under cancer policies issued by Liberty National Life Insurance Company ("Liberty National") providing unlimited coverage for radiation, chemotherapy and out-of-hospital prescription drugs ("old policy"), which coverage was effective on or after August 29, 1986, the date that Liberty National offered new replacement cancer policies limiting coverage for radiation, chemotherapy and out-of-hospital prescription drugs ("new policy"), excluding from the certified

class any insured, who, on or before the date of this class certification order, has filed a separate action against Liberty National asserting claims arising out of the cancer policies o[r] [sic] coverage."

In its Order of March 10, 1993, the Circuit Court reserved the right to modify, clarify, amend or refine the class certification and the definition of the Class.

13. The parties to this Class Action and Litigation thereafter negotiated and now desire to enter into this Agreement to resolve all claims arising out of or related to the alleged cancer policy exchange programs or related to the Released Claims (as defined in Section III below) which have been asserted or could be asserted by or on behalf of the Class or any Class Members on the terms and conditions set forth in this Agreement. The intent and purpose of this Agreement is to effect a fair and reasonable full and final settlement of all actions, claims, demands, causes of action, and liabilities which may have heretofore been, or may hereafter be, asserted by or on behalf of any person or persons described in said Class arising from or related to the alleged cancer policy exchange programs or to the Released Claims as defined in Section III below.

14. After substantial discovery and after due inquiry deemed by them to be sufficient, counsel for Named Plaintiff and the Class have concluded that a settlement of this Litigation upon the terms and conditions hereof would be in the best interest of the Class considering the totality of the circumstances, including but not limited to the substantial benefits afforded by the settlement to all Class Members; the risks, uncertainty and expense of litigation; the substantial defenses which

have been and could be asserted by defendant Liberty National, including but not limited to statutes of limitation defenses (the applicability and merit of such defenses not being conceded by Named Plaintiff, Class Representative, or Class Counsel); the primary need for reformation of the new policies and for other equitable relief for the Class in order to ensure that all Class Members with new policies currently in force and all Class Members who lapsed their old policies after August 29, 1986, (and did not reinstate the old policy) are given the opportunity to maintain coverage against future cancer claims for radiation, chemotherapy, prescription chemotherapy drugs, and for other out-of-hospital prescription drugs all without monetary limits, while at the same time achieving restitution of any past benefits which Class Members may have enjoyed but for the matters alleged in the complaint; and the other substantial benefits available under the settlement.

15. Liberty National denies all liability with respect to any and all claims alleged in the Litigation or described in this Stipulation, but has entered into this Stipulation so as to: (1) avoid the substantial expense, inconvenience, distraction, uncertainty, and adverse publicity associated with continued litigation; (2) avoid the risks of the Litigation; (3) provide coverage without monetary limits for radiation, chemotherapy, prescription chemotherapy drugs and other out-of-hospital prescription drugs to Class Members under the new cancer policies and thereby preserve the goodwill and loyalty of Liberty National's customers; (4) avoid the burdens of multiple and piecemeal litigation of substantially similar allegations in separate lawsuits in different courts; and (5)

eliminate any possibility that any of its Class Members were or could be prejudiced by virtue of having replaced an old policy with a new policy.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions herein, and the mutual undertakings of the parties hereto, it is hereby stipulated and agreed, by and among the Named Plaintiff, Class Representative, and Class Counsel on behalf of the Class, and the Defendant Liberty National and its Counsel, that the Litigation should be settled and compromised, subject to approval of the Circuit Court of Barbour County, Alabama, pursuant to Rule 23 of the Alabama Rules of Civil Procedure, according to the following terms and conditions:

THE TERMS OF THE SETTLEMENT

I. CLASS ACTION FOR SETTLEMENT PURPOSES

The parties agree, solely for the purpose of settlement, that the Litigation shall continue to be maintained as a class action pursuant to Alabama Rule of Civil Procedure ("ARCP") 23(b)(2), but if the Settlement is not approved or otherwise is not consummated, then the Parties retain all rights to oppose continued class action treatment, or to seek decertification of the Class.

The parties stipulate, subject to Court approval, that the Class shall consist of: all persons who now or in the past were insured under any cancer policy which (1) was issued by Liberty National Life Insurance Company ("Liberty National") on or before August 29, 1986, and (2) which provided benefits for radiation, chemotherapy,

prescription chemotherapy drugs, and other out-of-hospital prescription drugs without monetary limits, and (3) was paid and in force (or in the grace period) on or after August 29, 1986, regardless of whether such policy remains in force, thereafter lapsed or was replaced by a different Liberty National cancer policy after that date; *provided, however, that* (i) any insured who is or was a named plaintiff in any separate lawsuit which was filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies is excluded from the Class *unless* such lawsuit has been voluntarily dismissed without prejudice on or before the date this settlement is finally approved by the Circuit Court of Barbour County, Alabama; (ii) any insured whose "old policy" lapsed prior to August 29, 1986 and was not thereafter reinstated (after payment by the insured of all delinquent premiums) by Liberty National is excluded from the Class; and (iii) any insured whose first Liberty National cancer policy was a new policy form issued after August 29, 1986 is excluded from the Class.

II. BENEFITS FROM AND CONDITIONS OF SETTLEMENT

1. *Settlement of Pending and Potential Actions.* All actions, claims, demands, causes of actions, and liabilities which are asserted or which could be asserted by or on behalf of any Class Member in this Litigation relating to the alleged cancer policy exchange programs or the

Released Claims (as defined in Section III below) shall be resolved on the terms and conditions hereinafter provided.

2. *Settlement recommended by Class Counsel.* Class Counsel cannot bind the Class Members to the terms of this settlement without court approval, but Class Counsel and each of them shall recommend the settlement for approval and enforcement by the Court and shall support the fairness, adequacy, and binding effect of the settlement as to each Class Member in the event of any appeal or other challenge thereto.

3. *Court Approval.* All the transactions and undertakings herein are subject to approval by the Court and entry of a final judgment in accordance with Rule 54(b) of the Alabama Rules of Civil Procedure substantially in the form of the proposed order attached as Exhibit D, which: (i) approves the final certification of the Class described in Section I above; (ii) enters a final injunction and other declaratory and equitable relief permanently enjoining and requiring Liberty National to perform its obligations (including reformation of the new policies, ancillary restitution and the ancillary monetary relief) set forth in this Settlement Agreement (the "Injunction"), and subject to said Injunction and the right to enforcement thereof pursuant to the continuing jurisdiction reserved by the Court, approves the release of and dismisses with prejudice all claims asserted or which could have been asserted in this Litigation by or on behalf of the Class Members or any of them relating to the alleged cancer policy exchange programs or to the Released Claims as defined in Section III below; (iii) bars and enjoins each and all Class Members from filing, pursuing, continuing,

or participating as a litigant in any separate individual lawsuit or separate class action relating to the alleged cancer exchange programs or the Released Claims (as defined in Section III below); (iv) ratifies the terms of the escrow agreement attached hereto as Exhibit E, (v) establishes an administrative procedure for consideration of claims to be submitted by Class Members pursuant to paragraph II-11 of this agreement and approves the proof of claim form attached hereto as Exhibit C; (vi) designates a bar date on or before which proofs of claims shall be submitted as designated in the administrative procedure; and (vii) reserves jurisdiction over all matters related to the administration, consummation, interpretation, and enforcement of the Stipulation and Settlement. This settlement is further conditioned on final affirmance and approval by each appellate court, in which any appeal or other decision for review is filed, of all aspects of this settlement and the circuit court's Final Judgment and other orders contemplated hereby, if any appeal is taken from any such orders or judgments.

4. *Cash Payments to Be Made in Escrow.* Subject to the provisions of paragraph II-3, all fixed dollar settlement funds and the maximum amount of attorneys' fees which may be awarded by the Court will be paid by Liberty National to an independent escrow agent approved by the Court and placed in escrow within three (3) working days after preliminary approval of this Settlement Agreement by the Circuit Court. All fixed dollar settlement funds shall bear simple interest at twelve percent (12%) per annum from the date of the circuit court's preliminary approval until the date the funds are paid into escrow by Liberty National. In the event (i) any aspect of

the settlement agreement is rejected by the Circuit Court or approval of the settlement agreement by the Circuit Court is reversed, vacated, or modified on appeal, or (ii) an order precluding, barring, and enjoining separate actions by Class Members relating to the alleged cancer policy exchange programs or any of the Released Claims (as defined in Section III below) is not entered by the Circuit Court, or, if entered, is reversed, modified, or vacated in any respect on appeal; or (iii) any order is entered by the Alabama Supreme Court in any action now pending in any forum to which Liberty National is a party which permits the maintenance of separate individual or class actions asserting any Released Claims (as defined in Section III below) despite this settlement, then the escrowed settlement funds, attorneys' fees, and all accrued interest shall be returned from the escrow account to Liberty National. In the event the principal amount of attorneys' fees provided for in paragraph II-19 is less than the amount escrowed, the excess shall be returned from the escrow account to Liberty National. If this Settlement Agreement is approved by the Circuit Court and a Final Order and Judgment barring separate individual or class claims is entered by said court, and if such approval, order and judgment are affirmed finally and in their entirety in the event of any appeal, the escrowed settlement funds and the escrowed attorneys' fees (or such portion of the attorneys' fees if less is approved by the Circuit Court and affirmed in the event of appeals), and all accrued interest or investment proceeds ("interest") will be paid as the Court may direct thereafter to the Class Members and Class Counsel, with interest to be paid to the parties to whom the settlement

funds and the attorneys' fees funds are disbursed, i.e. with interest on the escrowed settlement funds distributed to the Class Members receiving the principal amount of the settlement funds; and with interest on the funds escrowed for attorneys' fees to be apportioned and distributed on the basis of the principal amounts to be distributed to Class Counsel and/or returned, if any, to Liberty National, all as provided in the written Escrow Agreement attached as Exhibit E.

5. Class Members Insured Under Old Policies Which Lapsed After August 29, 1986 May Reinstate Policies. Pursuant to the Injunction to be entered by the Circuit Court against Liberty National, Class Members who were named insureds under an old cancer policy in effect as of August 29, 1986 which was originally issued by Liberty National and which provided for benefits without monetary limits for radiation, chemotherapy, prescription chemotherapy drugs and/or other out-of-hospital prescription drugs, and whose old policy lapsed after August 29, 1986 (but was not replaced within 30 days by a new policy), shall have the option to reinstate his/her old policy, on a prospective basis only, without regard to insurability, at the current 1993 premium rate based on such Class Member's age on the date the old policy was originally issued. Provided, however, if the old policy terminated solely because the Class Member attained the termination age under the old policy, then the Class Member is not eligible for a reinstated policy under this paragraph. Current 1993 premium rates will not be increased prior to January 1, 1995 (as provided in paragraph II-8). Premiums will be charged on a prospective basis only, and coverage will be on a prospective basis

only. This option may be exercised by delivering a written request for reinstatement to: Thomas E. Hamby, Vice President, Liberty National Life Insurance Company, P.O. Box 2612, Birmingham, Alabama 35202. This option will expire if not exercised on or before January 1, 1995. If the option is exercised, reinstatement shall be effective only upon final approval of the Settlement (and final binding affirmation in the event of an appeal) and upon receipt of the applicable premium. Liberty National shall be enjoined to reinstate the policy of any Class Member who requests and qualifies for reinstatement under this paragraph. Any such reinstatement shall result in the cancellation of any new policy of such Class Member purchased while the Class Member was in lapsed status as to the old policy, and its replacement by the reinstated old policy on the terms provided in this paragraph. No one shall be construed by this agreement to qualify to own two (2) policies concurrently. Upon the lapse for non-payment of premiums or cancellation by the Named Insured of any policy reinstated under this paragraph, Liberty National shall have no further obligation under this settlement as to the lapsed policy or persons insured thereunder.

6. Class Members Insured Under New Policy to Receive Waiver of Limits on Benefits. Pursuant to an Injunction to be entered against Liberty National, Class Members who contemporaneously switched from an old policy to the new policy (and Class Members who lapsed the old policy, but bought a new policy within thirty days of that lapse and those Class Members who originally contemporaneously switched from an old policy to a new policy but subsequently switched from one new policy to

another new policy) will receive reformation of their new policies (if such new policy is currently in force) so as to provide prospective coverage for the named insured and covered persons under the new policy without monetary limits (with an automatic waiver or removal of any and all "caps" or monetary limits) for otherwise covered radiation, chemotherapy, and prescription chemotherapy drugs, and receive prospective coverage without monetary limits (with an automatic waiver or removal of any exclusion) for other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer. These prospective coverages shall apply to any claim for any expense incurred after the date of final approval (or final binding affirmation in the event of appeal) of this Agreement. All other provisions, terms, and conditions of the policy shall remain unchanged. (Benefit claims of Class Members under new policies accrued prior to the date of this agreement are addressed by the restitution fund provided in paragraph II-10 and the ancillary settlement funds created in paragraphs II-9 and II-12 of this Agreement.) Class Members currently owning new policies and who are eligible for reformation under this paragraph shall be charged no additional premium for this additional coverage or waiver, provided, however, that claims paid under this additional coverage or waiver may be considered as claims experience for the purpose of future premium adjustments, subject to the provisions of paragraph II-8 of this Agreement. With respect to Class Members with new policies currently in force and who are eligible for reformation under this paragraph, Liberty National shall be enjoined from applying or enforcing any exclusion of benefits for out-of-hospital prescription

drugs prescribed in connection with the treatment of cancer, and shall be enjoined from applying or enforcing any monetary limits or caps upon benefits for radiation, chemotherapy, or prescription chemotherapy drugs which is contained in any new policy currently owned by such Class Member; provided, however, that nothing herein shall prohibit Liberty National from continuing to enforce or apply such monetary limits or caps or exclusions with respect to policies owned by persons who are not Class Members or who are not eligible for reformation under this paragraph. The provisions of this paragraph II-6 shall apply only to new policies of said Class Members which are in force as of the date this Settlement Agreement is executed and shall apply to said policies only so long as they are kept in force and all premiums are paid (or after any reinstatement permitted under the terms of the policy upon full payment of all delinquent premiums). In the event of any appeal from a Final Order of the Circuit Court approving this Settlement, the Injunction contemplated by this paragraph shall take effect upon final binding affirmation of said appeal.

7. Pooling of Class Members for Rate Making Purposes. For purposes of future premium rate filings, Liberty National will "pool" the experience of all Class Members in all states in which these policies were approved for issuance unless specifically disapproved by the insurance department of one or more of the states. After preliminary approval of the Settlement, Liberty National will file all future premium rates based on the "pooled" claims and premiums experience of all Class Members in all states in which these old and new cancer policies were approved for issuance, and the Court will enter an Order

enjoining Liberty National to use its best efforts to obtain acceptance from all state insurance departments to allow Liberty National to "pool" the experience of all Class Members for rate making purposes. In the event the insurance department of one or more of the states disapproves "pooled" rate filing in that state, Liberty National will "pool" the experience of all Class Members in all remaining states. This settlement is not conditioned on approval of pooling of Class Members by any or all insurance departments in the states in which these policies were approved for issuance. This provision does not require Liberty National to pool policyholders or insureds who are not members of the Class with Class Members. The obligations of this paragraph shall expire if this Settlement is not approved by the Circuit Court or if such approval is reversed, vacated, or modified on appeal or other petition for review.

8. *Premiums Not Increased From Current Rates.* Pursuant to the Settlement, an Injunction will be entered against Liberty National prohibiting Liberty National from increasing premiums for any old policies of Class Members currently in force and for any new policies of Class Members currently in force prior to January 1, 1995. Thereafter, the percentage of any premium rate increase for old policies of Class Members shall not exceed the percentage of premium rate increases for new policies of Class Members. The requirements of this paragraph do not apply with respect to persons who are not Class Members.

9. *Incidental Monetary Settlement Fund for Class Members Who Submitted Certain Cancer Claims Under New Policies.* Pursuant to the Injunction to be entered against

Liberty National and ancillary to the equitable relief ordered by the Court, the trial court will order Liberty National to pay to the escrow agent the sum of one million dollars (\$1,000,000.00), subject to the terms and conditions of this settlement and the terms and conditions of the escrow agreement attached hereto as Exhibit E. All Class Members who return true and proper proof of claim forms (Exhibit C) as described in paragraphs II-10 and II-11 and who were named insureds on new policies pursuant to which benefit claims were submitted for radiation, chemotherapy or prescription chemotherapy drugs, or for whom expenses were incurred for other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer administered to any covered person under the policy will share per capita in this fund. With respect to other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer, Class Members who submit a true and proper proof of claim form (Exhibit C), and who otherwise qualify under this paragraph, shall be entitled to share per capita in this fund if he/she incurred expenses for other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer to any covered person under the Class Member's new policy which was in effect at the time the expenses were incurred. Within ninety (90) days of the deadline for submission of proof of claim forms provided in paragraph II-11, or within thirty (30) days of final binding affirmance of approval of this Settlement in the event of an appeal, whichever last occurs, Liberty National shall file with the Clerk and the Special Master a list setting forth the names and last known addresses of each Class Member shown by Liberty National records to be qualified to share in this

fund. A check in the amount of each qualified Class Member's per capita share of this fund will be sent by the Escrow Agent (at Liberty National's expense) to the last known address of each such Class Member. Such check shall be mailed at the same time and in the same manner as set forth in paragraph II-11 below. Class members eligible hereunder for the benefits of this paragraph shall include and be limited to those class members described in this paragraph who contemporaneously switched from an old policy to a new policy (including class members who lapsed the old policy, but bought a new policy within 30 days of that lapse), and any such class members who originally contemporaneously switched from an old policy to a new policy but subsequently switched from one new policy to another new policy.

10. Liberty National to Provide Full Restitution of Certain Benefits to Class Members Who Have Submitted Certain Benefit Claims Under the New Policy. Pursuant to the Injunction to be entered against Liberty National, and ancillary to the equitable relief ordered by the Court, any Class Member who was a named insured under a new policy when a claim for cancer benefits under that new policy was heretofore submitted for radiation, chemotherapy, or prescription chemotherapy drugs which exceeded the monetary limits for these coverages under said new policy, or whose expenses included any other out-of-hospital prescription drugs prescribed in connection with the treatment of cancer shall have the right to submit a proof of claim on the form attached as Exhibit C, with supporting documentation. If, after considering all benefits paid to (or to the assignee of) each such Class Member under the new policy (including but not limited

to all benefits which would not have been afforded by the Class Member's old policy), the claimant Class Member has still received fewer dollars than he/she would have received for all benefits (including "hospital admission" benefits and all other benefits under the old policy) had the Class Member's old policy remained in force and all other benefits under the old policy, then Liberty National shall, pursuant to the Injunction contemplated hereby, make restitution of one hundred percent (100%) of the difference to the named insured under the new policy which was in force at the time of the pertinent treatment. To the extent each claiming Class Member qualifies for payment under this paragraph, he/she shall be paid the amount due hereunder without regard to any defense of the statute of limitations which could have been asserted by Liberty National had this case gone to trial. Only Class Members who were named insureds on the new policy which was in force at the time the treatment was rendered and who submit true and proper proof of claim forms with supporting documentation and who are otherwise eligible for payments under the terms of this paragraph ("Qualified Claims"), will be entitled to the benefits of this paragraph. Copies of legitimate bills or invoices from medical providers will be considered adequate documentation, subject to Liberty National's right to contest the accuracy or validity of the claim. Upon written request by or on behalf of a claimant, Liberty National will use reasonable good faith efforts to assist in locating and providing any information reasonably available within its files or data processing records concerning the identity of providers and dates of service for any such claimant. Nothing in this paragraph shall require Liberty

National to pay for any expense it has already actually paid, or to make duplicate payments for the same item of expense. Class Members eligible hereunder for the benefits of this paragraph shall include and be limited to those class members described in this paragraph who contemporaneously switched from an old policy to a new policy (including class members who lapsed the old policy, but bought a new policy within 30 days of that lapse), and any such class members who originally contemporaneously switched from an old policy to a new policy but subsequently switched from one new policy to another new policy.

11. *Administrative Procedure for Claims.* The Court shall appoint a Special Master to review all claims and disputes which may arise with respect to proofs of claim made pursuant to paragraph II-10. The Special Master shall have no authority to alter or modify the terms of this Agreement. The Special Master shall not be a past or present employee or expert of or for any of the parties hereto or their counsel. The proof of claim form referenced in paragraph II-10 is attached hereto as Exhibit C. The proof of claim form shall be mailed at the same time and to the same persons as provided with respect to the Notice described in paragraph II-17 below. The proof of claim form shall require all claims to be submitted to the Special Master within 120 days of mailing. Within seven (7) days of receipt of each proof of claim form, the Special Master shall (i) submit one copy of each proof of claim form received to counsel for Liberty National, (ii) submit one copy of each proof of claim form received to Class Counsel; and (iii) file the original proof of claim form with the Court. No later than ninety (90) days after said

deadline for submission of proof of claim forms by Class Members, or thirty (30) days after final binding affirmance of this Settlement in the event of appeal, whichever last occurs, Liberty National shall submit to the Special Master a list of all proofs of claim, together with a statement of the amount (if any) calculated by Liberty National to be due each claimant as restitution under this paragraph. Within thirty (30) days following the expiration of the time for appeal, or following final binding affirmance of the Circuit Court, each claimant Class Member will then be notified in writing by the Special Master (at Liberty National's expense) of the preliminary disposition of his claim by Liberty National and will be notified that the Class Member can then obtain a special hearing of his claim by the Special Master by requesting such a hearing in writing addressed to Class Counsel, and that such request must be submitted within thirty (30) days. Class Members submitting a timely written request for hearing shall be notified in writing of the hearing date and the place of hearing set by the Special Master. Following said hearing, the Special Master shall make a final determination as to the claimant's entitlement under paragraph II-10, which determination shall be binding on the claimant and all other parties unless contested by either party, in which event the Special Master shall file his determination as his findings and recommendations to the Court for the final binding determination. Liberty National will be required to make restitution to each Qualified Claimant on the terms specified in paragraph II-10 within sixty (60) days after the final determination as to all proofs of claim, and the restitution required by this paragraph II-11 as determined by the

Special Master (or if disputed, by the Court) will be paid by a check payable to each pertinent named insured at the address shown in the named insured's proof of claim form. The proof of claim form and notice shall clearly notify Class Members that they must submit proof of claim forms within 120 days of mailing of the notice contemplated by paragraph II-17 below, regardless of any appeal of or objection to this Settlement, but that the filing of a proof of claim form shall not waive or otherwise preclude the Class Member's right to object to or appeal any approval of this Settlement by the Court, and that if the Court (or any appellate court) rejects any aspect of the Settlement, or if any other condition of this Settlement is not met, then the Class Member's submission of the proof of claim form shall not prejudice his right in any subsequent litigation.

12. Supplemental Extracontractual Monetary Relief Fund for Certain Class Members. Pursuant to the Injunction to be entered against Liberty National and ancillary to the equitable relief provided, the Court will order Liberty National to pay to the escrow agent the sum of three million dollars (\$3,000,000.00), subject to the terms and conditions of this settlement and the terms and conditions of the escrow agreement attached hereto as Exhibit E. Each Class Member who is a named insured under a new policy and who submits a valid and proper claim form which is determined (pursuant to the procedures of paragraph II-11) to demonstrate his/her entitlement to receive payment of restitution under the terms of paragraph II-10 ("Qualified Claimant") will, in addition to any other payment, share in this fund consisting of three million dollars (\$3,000,000.00) to be paid by Liberty

National to the escrow agent as provided in paragraph II-4. This fund will be divided among Qualified Claimants in an equitable method to be devised by the Court. The Court shall devise the most equitable methodology for distribution of this Supplemental Extracontractual Monetary Relief Fund to all Qualified Claimants (i) per capita; or (ii) based on the amount by which each Qualified Claimant's total benefits which would have been received under the old policy exceeded the total benefits actually paid by Liberty National under the Class Member's new policy; or (iii) a combination of (i) and (ii) after determination of the number of Qualified Claimants and the amount of qualified claims. This fund shall be paid to each Qualified Claimant at the same time and in the same manner as provided in paragraph II-11 and shall be considered as ancillary to the restitution and other equitable relief afforded by the Settlement. Class members eligible hereunder for the benefits of this paragraph shall include and be limited to those class members described in this paragraph who contemporaneously switched from an old policy to a new policy (including class members who lapsed the old policy, but bought a new policy within 30 days of that lapse), and any such class members who originally contemporaneously switched from an old policy to a new policy but subsequently switched from one new policy to another new policy.

13. Deceased Class Members. The estate of a deceased named insured Class Member who otherwise qualifies will be entitled to any benefits for otherwise valid claims as provided by paragraph II-10, but will not share in benefits provided by paragraphs II-9 or II-12. The executor or administrator of the estate of any such deceased

person shall be entitled to file the proof of claim form on behalf of the deceased and his/her estate, but shall be required to attach thereto a copy of documents sufficient to show that he/she is or was the executor or administrator of the deceased's estate. This requirement shall be clearly noted on the claim form.

14. *Settlement Requires Rule 23(b)(2) Mandatory Class With No Right of Opt Out.* This Settlement Agreement is conditioned on approval by the Court of a Rule 23(b)(2) mandatory class with no right to opt out, and a final court order (and final binding affirmance in the event of any appeal) expressly barring, enjoining, and precluding each Class Member from filing, prosecuting or participating as a litigant (by intervention or otherwise) in any separate individual or class suits regarding the alleged cancer policy exchange programs or asserting any claims which are to be "Released Claims" as defined in Section III below. Provided, however, that this prohibition shall not apply to restrict Named Plaintiff and Class Counsel from fulfilling their obligations under Section VI below. This Settlement Agreement is further conditioned on there being no decision by the Alabama Supreme Court inconsistent with this paragraph in any lawsuit involving the alleged cancer policy exchange programs to which Liberty National is a party prior to the entry (and final binding affirmance in the event of appeal) of the Final Judgment, approval and orders of the Circuit Court of Barbour County contemplated herein.

15. *No Admission of Liability By Liberty National.* Liberty National, by agreeing to the terms of this settlement, does not admit, but to the contrary denies, any liability or wrong-doing in any form or fashion by Liberty National,

but has entered into this Settlement Agreement to avoid the expense, adverse publicity, and uncertainty of litigation, and for other reasons set forth above. Liberty National strongly contends that its new policies provide substantially greater overall benefits or coverage to most, if not all, insureds, and result in the payment of greater total benefits to a majority of insureds who are later diagnosed with cancer. Liberty National denies that any Class Member or any other person would have any right to or grounds for obtaining the relief described herein, but is willing to agree to the terms of this settlement so that no Class Member can even arguably have been prejudiced by any aspect of Liberty National's decision to offer to replace its old cancer policies with a more modern policy.

16. *Court Submittals.* Counsel for the parties shall jointly submit to the Court and shall advise the Court that they jointly request court approval and entry of the following: (i) a proposed order preliminarily approving this Settlement Agreement and ordering notice to Class Members (attached hereto as Exhibit A); (ii) proposed notice to Class Members (attached hereto as Exhibit B) to be mailed by Liberty National and summary notice (attached hereto as Exhibit B-1) to be published by Liberty National as provided in Exhibit A, which advises them of the terms of this Settlement Agreement and of each Class Member's right to be heard concerning the fairness, reasonableness and adequacy of the settlement at a hearing before the Court; and (iii) proposed proof of claim form (attached hereto as Exhibit C) to be completed by the named insured Class Members specified in paragraph II-10 and designed to furnish information sufficient

to enable Liberty National, the Special Master and the Court to calculate the amounts to which said named insured Class Members will be entitled under the terms of this Settlement Agreement if it is approved and if the conditions of this Settlement are satisfied; (iv) a proposed order and final judgment (attached hereto as Exhibit D) which provides, *inter alia*, that the settlement is finally approved, and that all Claims asserted or which could have been asserted by Class Members regarding the alleged cancer policy exchange programs or the Released Claims (as defined in Section III below) are finally released and dismissed with prejudice (subject only to the enforcement of the terms of this settlement), and which bars and enjoins Class Members from filing, pursuing, or participating as litigants (by intervention or otherwise) in any separate individual or class actions asserting any of the Released Claims; and (v) a proposed escrow agreement (attached hereto as Exhibit E) to be executed by the escrow agent appointed by the Court and providing the duties of the escrow agent, and direction to the escrow agent as to the appropriate investments for the settlement fund, and the terms for release of the funds from escrow.

17. *Notice to Class Members.* As soon as practicable after preliminary approval by the Circuit Court, Liberty National shall, at its expense, mail a class action notice as required by Exhibit A, in a form approved by the Court and agreed to by Named Plaintiff, Class Counsel, and Liberty National, to the last known address of each Class Member specified in Exhibit A, which notice shall be mailed at least sixty (60) days in advance of the hearing date. Any Class Member who demonstrates that he failed to receive the class notice and who otherwise qualifies for

restitution under paragraph II-10 can nonetheless avail himself of the benefits provided by paragraph II-10 within a reasonable time after receiving actual notice, and if his claim is filed before the funds provided in paragraphs II-9 and II-12 have been paid by the escrow agent, the claimant will share in those funds as well to the extent he/she qualifies.

18. *Payment of Court Costs.* Liberty National shall pay all court costs taxed by the Court which shall consist of all expenses for class notice, fees and expenses of actuarial or other experts employed by Class Counsel, and fees and expenses of the Special Master as approved by the Court. Fees for the actuarial or other experts employed by Class Counsel shall not exceed the total sum of \$150,000.00, collectively. The hourly rate of the Special Master shall not exceed \$150.00 per hour.

19. *Fees and Expenses for Class Counsel.* Class counsel will petition the Court for an award of reasonable attorneys' fees and expenses which shall be paid by Liberty National in addition to all other costs and expenses provided for in Paragraph II-18 above in this Agreement. Illegible attorneys' fees and expenses shall be in addition to and shall not be deducted from amounts to be disbursed to Class Members under the Settlement. The amount of attorneys' fees and expenses to be awarded to Class Counsel shall be determined by the Court, but in no event will the attorneys' fees exceed the total sum (for all Class Counsel, collectively) of 4.5 million dollars (\$4,500,000.00) for all attorneys' services relating to this Litigation, including but not limited to, services rendered and to be rendered in connection with the Settlement or

its implementation. Liberty National will not object to any request for attorneys' fees in an amount not in excess of that amount. The expenses to which the Class Counsel shall be entitled will be restricted to actual and necessary out-of-pocket expenses as allowed by the Court not to exceed \$35,000.00. These expenses shall be in addition to those specific expenses referred to in paragraph II-18.

20. *Resolution of Objections.* Any objections of Class Members to the certification of this action pursuant to ARCP 23(b)(2), to the fairness or adequacy of the settlement or class notice, to approval of the settlement by the Circuit Court, and any objections or disputes related to the allowance or disallowance of claims of Class Members, or the implementation or enforcement of this Settlement or the binding effect of this Settlement upon the claims of any Class Member, or relating to the award of attorneys' fees and expenses to Class Counsel within the limits imposed in paragraph II-19, or relating to any aspect of this Settlement shall be submitted to the Circuit Court of Barbour County for decision.

21. *Final Judgment.* This Settlement Agreement is subject to the Court entering a final judgment containing injunctive, declaratory and equitable relief (including reformation of policies, ancillary restitution and other ancillary monetary relief) necessary to implement this Agreement in substantially the form as set out in Exhibit D attached hereto. It is the intent of the parties that said Final Judgment shall be entered upon final Court approval of this Settlement Agreement. Subject to the terms and conditions of the Stipulation, Liberty National, its successors and/or assigns, and all persons or entities acting in concert with Liberty National, shall be enjoined:

(i) from instituting, engaging or participating in, authorizing, maintaining, or continuing any of the alleged cancer policy exchange programs, (ii) from instituting, engaging or participating in, maintaining or authorizing any future program relating to the exchange, substitution, switching or attempting to exchange, substitute, or switch Liberty National cancer insurance policies whereby the substituted policy excludes or limits any benefits that are provided in the replaced Liberty National cancer policy, without full disclosure of the benefits and coverages in the original and substituted policies, including disclosure of any benefits in the original policy which [sic] are excluded or limited benefits in the substituted policies; (iii) with respect to those Class Members specified in paragraph II-6, above, to reform the new policies of such Class Members currently in force to provide (subject to the terms and conditions of the Stipulation) prospective coverage without monetary limits for radiation, chemotherapy, prescription chemotherapy drugs administered to the named insured or any covered person under the new policy, and to provide prospective coverage without monetary limits or for other out-of-hospital prescription drugs prescribed to the named insured or any covered person under the new policy in connection with the treatment of cancer, so long as the current new policy remains in force and premiums are paid; (iv) from increasing the premiums on the old or new policies of Class Members prior to January 1, 1995; (v) to make restitution to the named insured Class Members for otherwise valid benefit claims heretofore accrued under the new policies of Class Members to the extent required by and in accordance

with the terms and conditions of paragraphs II-10 and II-11 of the Settlement; (vi) from denying any otherwise valid future claims under the new policies of those Class Members specified in paragraph II-6 above for benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs hereinafter administered to any covered person under the new policy in connection with cancer on the basis of any monetary limits upon or exclusions of coverage for said benefits under the new policies of such Class Members, subject to the terms and conditions of the Settlement; and (vii) to pay the two settlement funds and attorneys' fees into escrow and to pay other fees and expenses as set out in the Settlement Agreement and to implement all other terms of this Settlement. Each Class Member shall be enjoined from bringing any subsequent action asserting the Released Claims (as defined in Section III below).

22. *Dismissal of Pending Claims.* Subject only to final approval (and final binding affirmance in the event of appeal) of this Settlement Agreement upon the terms and conditions specified in this document and to the entry of the final judgment provided for in paragraph II-21 of this Settlement Agreement, all claims whatsoever which were or could have been asserted by the Named Plaintiff or by or on behalf of any Class Member (including, but not limited to, all claims which could have been asserted by intervention or otherwise) against Liberty National (or any of the related persons or entities to be released pursuant to Section III below) regarding the alleged cancer policy exchange programs or the Released Claims (as defined in Section III below) shall be dismissed with

prejudice. Upon entry (and final binding affirmance in the event of appeal) of the final judgment provided for in paragraph II-21 of this Settlement Agreement, and without further action by anyone, each and all of the Class Members shall be deemed to have released Liberty National as set forth in Section III below.

23. *Termination of Agreement.* If this Settlement is not approved in its entirety by the Court by a final judgment which conforms to the provisions of this Settlement Agreement entered in accordance with Rule 54(b), or if any other condition of this Settlement Agreement is not met, then in that event: (i) the funds deposited with the escrow agent shall be returned to Liberty National together with all accrued interest; (ii) the parties and Class Members shall be restored to the status quo which existed prior to the execution of this Agreement; and (iii) the obligations of the parties to implement the settlement, other than the obligation of Liberty National to pay the fees and expenses of the actuarial expert employed by Class Counsel, any expense theretofore incurred by the Special Master and any expenses in connection with the Class notice, shall be null and void. Provided, however, that parties may, by written mutual agreement, executed in accordance with paragraph VII-5 below, waive any condition which they mutually agree is not material.

24. Nothing in this document or the orders contemplated hereby shall require Liberty National to take, or prohibit Liberty National from taking, any action with respect to persons who are not Class Members.

III. Released Claims

Effective upon on [sic] the final approval of all aspects of this Settlement by the Circuit Court of Barbour County, Alabama, and the final, binding affirmance of said approval in the event of any appeal, Named Plaintiff, individually and on behalf of the Class, and each Class Member, separately and severally, do hereby full [sic], finally, and forever release Liberty National and each of its past, present, and/or future: parents, subsidiaries, affiliated and related entities and persons, officers, employees, directors, shareholders, agents, successors, and assigns, separately and severally, of and from all claims, causes of action and liabilities (known or unknown) which have been or could be asserted by any Class Member, whether arising under state or federal statutory or common law, to the extent such claims, causes of action or liabilities arise from, are connected with, or are in any way based upon or related to any allegation of fraud, misrepresentation, concealment, failure to disclose, or other tortious conduct or breach of duty which occurred in whole or in part on or before the date of this Settlement Agreement, regarding (1) the alleged cancer policy exchange programs, (2) any other transaction resulting in the issuance of a new policy providing cancer coverage for a Class Member previously insured under an old policy, or (3) the failure to offer or issue any Class Member a new policy (the "Released Claims").

IV. Procedures to Obtain Court Approval

The parties agree, as soon as practicable after execution of this Settlement, to take all necessary steps to obtain Court approval of the Settlement, as follows:

(a) the parties shall apply jointly for entry of an Order With Respect to Proposed Settlement (the "Preliminary Order") substantially in the form attached hereto as Exhibit A (i) providing that, for the purposes of settlement only, the Litigation shall proceed as a class action pursuant to ARCP 23(b)(2); (ii) directing that notice of the proposed Settlement be provided by Liberty National to all Class Members specified in Exhibit A who can reasonably be identified by individual notice delivered by first class mail to the last known address of each Class Member, substantially in the form attached hereto as Exhibit B, and by one-time publication of a summary notice, substantially in the form attached hereto as Exhibit B-1, in the newspapers listed in the Preliminary Order; (iii) setting a hearing date for a fairness hearing pursuant to ARCP 23; and (iv) providing that any Class Member who objects to this Stipulation or to any part thereof, or to the fairness, adequacy or reasonableness of the Settlement, or to the procedures provided for herein, or to the maintenance of the Litigation under ARCP 23(b)(2), or to the contents and method of delivery of the notice, or to any Order or findings entered by the Court, may appear at the Settlement Hearing to show cause why the Settlement should not be approved, provided that such Class Member files at least ten (10) days prior to the date of the Settlement Hearing his or her written objections (and any briefs or supporting papers) with the Clerk of

the Court and serves copies thereof upon counsel designated in the Preliminary Order to receive the same.

(b) following the fairness hearing, the parties shall jointly file a Motion for an Order and Final Judgment in substantially the form attached hereto as Exhibit D, approving the Settlement, and dismissing with prejudice all Released Claims (as defined in Section III above) which have been or could have been asserted by Named Plaintiff and all Class Members against Liberty National. It is contemplated by the parties that the Court shall, in accordance with applicable law, enter appropriate Findings of Fact and Conclusions of Law regarding the approval or disapproval of this settlement, disposition of any objections which may be raised at or in conjunction with the fairness hearing.

V. Costs of the Notice

Liberty National agrees to pay the costs of preparation of the agreed-upon notice to Class Members of the proposed Settlement if said notice is approved by the Court, as well as the costs of delivery, mailing and publication of the Notice.

VI. Other Actions

If any Released Claims (as defined in Section III above) are brought by any person in any court prior to the entry (and final binding affirmance in the event of any appeal) of a final judgment in the Litigation pursuant to the terms contemplated herein, all parties and Class Counsel shall cooperate to have the action (or actions)

transferred to the Circuit Court of Barbour County, Alabama in which the Litigation is pending and to seek dismissal of the action (or actions) or to have such action or actions consolidated with this Litigation and subject to resolution pursuant to this Settlement. This paragraph shall be binding upon all parties and Class Counsel immediately upon final approval of this Settlement by the Circuit Court and shall continue to be effective unless and until said approval of the Settlement is reversed or vacated on appeal.

VII. Miscellaneous

1. *Additional Documentation.* The parties agree to execute such additional documents as may be reasonably necessary to effectuate the settlement.
2. *Authority to Execute.* The undersigned person executing this agreement on behalf of Liberty National represents and warrants to the Plaintiff, Class Members and the Court that he is authorized to execute this agreement and to fully bind Liberty National to its terms.
3. *Counterparts.* This agreement may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This agreement may also be executed in duplicate originals each of which shall be deemed an original for all purposes.
4. *Entire Agreement.* This document and the exhibits referenced herein constitute the entire agreement between the parties with regard to the subject matter hereof and all negotiations, oral or otherwise, prior to the

execution of this Settlement Agreement are merged herein. The terms of this agreement may not be modified, varied or amended except in writing signed by all parties hereto and approved by the court.

5. *Parties Bound.* This agreement shall be binding upon and inure to the benefit of the parties hereto including all Class Members and their respective heirs, predecessors, privies, administrators, executors, representatives, guardians, successors and assigns.

6. *Continuing Jurisdiction.* All proceedings with respect to the Settlement and the determination of all controversies relating thereto, including but not limited to enforcement of the judgment and of the terms of the Settlement and resolution of any disputed questions of law and fact with respect to the release of the Released Claims, shall be subject to the continuing jurisdiction of the Circuit Court of Barbour County, Alabama.

7. *Counsels Authority to Execute.* Each of the attorneys executing this Settlement on behalf of Liberty National or Robertson, as Named Plaintiff and as Class Representative, warrants and represents that he or she has been duly authorized and empowered to execute this Stipulation on behalf of such party.

8. Nothing in this document or the judgments or orders contemplated hereby shall require Liberty National to provide insurance coverage for the treatment of a disease or condition which is not otherwise covered by the pertinent policy, or for drugs or treatments which have not been approved for use in this country as described in the policies nor shall anything in this Agreement require Liberty National to allow the same insured

to be covered under more than one (1) Liberty National cancer policy at the same time. No act of Liberty National in implementing any provisions of the Settlement at or before the time required hereunder shall estop or otherwise preclude Liberty National, in any respect, from withdrawing any benefits or coverage contemplated hereunder in the event this Settlement is rejected by the Court or reversed, vacated, or modified on appeal.

IN WITNESS WHEREOF, and intending to be legally bound thereby, this Settlement has been executed this 16th day of June, 1993 by the undersigned counsel on behalf of their respective clients, and by the Named Plaintiff and Liberty National.

OF COUNSEL: /s/ Jere L. Beasley
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/s/ James W. Gewin
JAMES W. GEWIN
 One of the Attorneys
 for Liberty National

 LIBERTY NATIONAL LIFE
 INSURANCE COMPANY

 BY: /s/ William C. Barclift
ITS GENERAL
COUNSEL

 /s/ Charlie Frank
Robertson
CHARLIE FRANK
ROBERTSON,
 Individually and
 as court-approved
 representative of the
 Class

**[PROPOSED - NOT
 YET ENTERED BY
 CIRCUIT COURT]**

**IN THE CIRCUIT COURT FOR
 BARBOUR COUNTY, ALABAMA
 Clayton Division**

CHARLIE FRANK ROBERTSON,)
 for himself, and in his)
 representative capacity for the)
 class of persons described herein,) Case Number:
 Plaintiff,) CV-92-021

 vs.)

 LIBERTY NATIONAL LIFE)
 INSURANCE COMPANY,)
 Defendant.)

ORDER AND FINAL JUDGMENT

A Settlement Hearing having been held before this Court on ___, 1993, pursuant to this Court's order of June 16, 1993, to determine whether this Court should approve as fair, adequate and reasonable a settlement of this action upon the terms and conditions of the attached Stipulation and Agreement of Compromise and Settlement dated June 16, 1993 and executed by all parties ("Stipulation" or "Stipulation of Settlement"); it appearing that due notice of said Settlement Hearing was given in accordance with the terms of the aforesaid order; the Court having determined that notice to the Class, as described in the aforesaid order, was the best practicable notice under the circumstances, and fully complies with

all requirements of Due Process, and all requirements of Alabama Rule of Civil Procedure 23; the respective parties having appeared by their attorneys of record; the Court having received and considered arguments and evidence in connection with the proposed compromise and settlement of the action; the attorneys for the respective parties having been heard; and opportunity to be heard having been given to all of the person requesting to be heard in accordance with the aforesaid order; and the proposed Settlement and all other matters of record in this action having been heard and considered by the Court; and based on the Findings of Fact and Conclusions of Law set forth in a separate order entered contemporaneously herewith, it is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. For purposes of considering, approving and effectuating the Stipulation of Settlement and to fairly and adequately protect the interests of the members of the class, this Court has previously ordered, and hereby orders and confirms, that this action is to be maintained as a class action pursuant to Ala.R.Civ.P. 23(b)(2), for a Plaintiff Class consisting of:

All persons who now or in the past were insured under any cancer policy which (1) was issued by Liberty National Life Insurance Company ("Liberty National") on or before August 29, 1986, and (2) which provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs without monetary limits, and (3) was paid and in force (or in the grace period) on or after August 29, 1986, regardless of whether such policy remains in force, thereafter lapsed

or was replaced by a different Liberty National cancer policy after that date: *provided, however,* that (i) any insured who is or was a named plaintiff in any separate lawsuit which was filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies is excluded from the Class *unless* such lawsuit has been voluntarily dismissed without prejudice on or before the date this Settlement is finally approved by the Circuit Court of Barbour County, Alabama; (ii) any insured whose "old policy" lapsed prior to August 29, 1986 and was not thereafter reinstated (after payment by the insured of all delinquent premiums) by Liberty National is excluded from the Class; and (iii) any insured whose first Liberty National cancer policy was a new policy form issued after August 29, 1986 is excluded from the Class.

2. The Court has heretofore found and hereby finds and reaffirms for purposes of settlement that the Named Plaintiff is an adequate representative of the Class and that all requirements of Ala.R.Civ.P.23(b)(2) are met. The Court expressly finds for purposes of settlement that the Class is so numerous that joinder of all members is impracticable; that there are questions of law and fact, common to the Class; that the claims of the Named Plaintiff are typical of the claims of the Class; that the representative parties have fairly and adequately protected the interests of the Class and will continue to do so; that, assuming the allegations of the complaint (which Liberty National denies) to be true, Liberty National has acted on grounds generally applicable to the class, thereby making

appropriate final equitable and injunctive relief with respect to the class as a whole; that the nature of the interests of the class members, the nature of the Settlement, and the fact that the vast majority of class members have not suffered any actual out-of-pocket monetary losses or damages at this time, make this action inappropriate for certification under Ala.R.Civ.P.23(b)(3); and that maintenance of this action pursuant to Ala.R.Civ.P.23(b)(2) is superior to any other method of proceeding with these claims.

3. Liberty National Life Insurance Company is hereby enjoined and ordered to perform its obligations under the Stipulation of Settlement, which Stipulation of Settlement is hereby affirmed and approved in its entirety and incorporated herein by reference. The Court expressly finds that the primary relief provided for by the Stipulation and Settlement and the primary relief which would be justified by the alleged (but denied) conduct, is injunctive and further equitable relief in the nature of declaratory relief, reformation of certain insurance policies, and ancillary restitution. The provisions in the Stipulation of Settlement for incidental monetary relief and supplemental extracontractual monetary relief are ancillary to the primary equitable and injunctive relief.

4. Subject to the terms and conditions of the Stipulation of Settlement, Liberty National Life Insurance Company and its successors and assigns, and all other entities and individuals acting in concert with Liberty, National are hereby permanently ENJOINED:

(a) From instituting, engaging or participating in, maintaining, authorizing or continuing any of the alleged cancer policy exchange

programs as defined in the Settlement and Stipulation;

(b) From instituting, engaging or participating in, maintaining or authorizing any future program relating to the exchange, substitution, switching or attempting to exchange, substitute, or switch Liberty National Cancer insurance policies whereby the substituted Liberty National Cancer policy excludes or limits any benefits that are provided in the replaced Liberty National Cancer policy, without full disclosure of the benefits and coverages in the replaced and substituted policies, including disclosure of any benefits in the original policy which are excluded or limited benefits in the substituted policies;

(c) With respect to those Class Members specified in paragraph II-6 of the Stipulation, to provide benefits without monetary limits for radiation, chemotherapy, prescription chemotherapy drugs, and out-of-hospital prescription drugs prescribed in connection with the treatment of cancer under the new policies of such Class Members currently in force so long as the new policies remain in force and premiums are paid;

(d) With respect to those Class Members specified in paragraph II-6 of the Stipulation, to reform (or treat as having been reformed) the new policies (as defined in the Stipulation) of Class Members presently in force to provide prospective coverage without monetary limits (so long as each such new policy is kept in force and all premiums are paid) for otherwise covered radiation, chemotherapy, and prescription chemotherapy drugs administered to the named

insured or any covered person under the new policy in connection with the treatment of cancer, and to provide coverage without monetary limits for other out-of-hospital prescription drugs prescribed to the named insured or any covered person under the new policy in connection with the treatment of cancer, subsequent to the later of (i) the date of this order or (ii) the final binding affirmation of this order in the event of any appeal or other petition for review, if any appeal or petition for review is taken regarding this action. No additional premium shall be charged for this additional coverage; provided, however, that claims paid under this additional coverage or waiver may be considered as claims experience for the purposes of future premium adjustments, subject to the provisions of paragraph II-8 of the Stipulation.

(e) From increasing the premiums on the old cancer policies or the new cancer policies of Class Members prior to January 1, 1995;

(f) With respect to those Class Members specified in paragraph II-10 of the Stipulation, to make restitution to the named insured for otherwise valid benefit claims heretofore accrued under the new policies of Class Members for radiation, chemotherapy, prescription chemotherapy drugs and other out-of-hospital prescription drugs administered to any covered person under the Class Member's new policy in connection with the treatment of cancer, without regard to any monetary limits upon or exclusion of these benefits which were previously applicable under Class Members' new policies, subject to the terms, conditions and limitations of the

Stipulation and particularly those set forth in paragraphs II-10 and II-11;

(g) With respect to those Class Members specified in paragraph II-6 of the Stipulation, from applying or enforcing any exclusion of benefits for out-of-hospital prescription drugs prescribed in connection with the treatment of cancer and from applying or enforcing any monetary limits or caps upon the benefits for radiation, chemotherapy or prescription chemotherapy drugs which are contained in any new policy owned by such Class Member;

(h) Subject to any regulatory jurisdiction of any insurance department within the states in which Liberty National's cancer policies were approved for issuance, to pool the experience of all Class Members in all states and file all future premium rates based on the pooled claims and premiums experience of all Class Members in all states in which the old and new cancer policies were approved for issuance, and to use its best efforts to obtain acceptance from all state insurance departments to allow Liberty National to pool the experience of all Class Members for rate making purposes.

5. Subject to this Court's retention of jurisdiction to enforce this Order and the Stipulation of Settlement, all claims asserted in this action, including those claims asserted in Named Plaintiff's Amended Complaint, and all claims which have been or could be asserted (by intervention or otherwise) by or on behalf of any Class Member relating to the "alleged cancer exchange programs" or the "Released Claims" (as those terms are defined in the Stipulation), are DISMISSED in their

entirety on the merits, with prejudice, and defendant Liberty National (and the related beneficiaries of the Release set forth in Section III of the Stipulation of Settlement) are hereby RELEASED from all claims, actions, causes of action and liabilities which could be asserted by or on behalf of any Class Member, which relate to the alleged cancer exchange programs or the Released Claims as defined in the Stipulation of Settlement. The Release provided in Section III of the Stipulation is hereby approved and made effective and incorporated herein by reference.

6. Named Plaintiff and each and all Class Members are hereby permanently ENJOINED, precluded and barred from filing, initiating, asserting, maintaining, pursuing, or continuing or participating as a litigant (by intervention or otherwise) in any action, whether an individual lawsuit or class action, in any court, asserting any of the claims dismissed herein or any of the Released Claims as defined in the Stipulation of Settlement; *provided, however, that neither this injunction, nor the Stipulation of Settlement described in this order shall apply to any individual who was a named plaintiff in any separate action filed on or before March 10, 1993 which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer policies, unless said action has been voluntarily dismissed without prejudice prior to the date of this Order and Final Judgment.*

7. The Escrow Agreement entered into June 16, 1993, between Liberty National and the First Commercial Bank attached as Exhibit "E" to the Stipulation is

approved and its terms and conditions are ratified by the Court.

8. All Proof of Claim Forms shall be submitted by each Class Member entitled under the Stipulation to submit a Proof of Claim Form on or before December 20, 1993 and in the manner as designated in the administrative procedure set forth in the Stipulation of Settlement, otherwise they shall be forever barred from claiming or receiving any of the monetary benefits set forth in paragraphs II-9, II-10 and II-12 of the Stipulation. The Proof of Claim Form attached as Exhibit C to the Stipulation is hereby approved as to form and content.

9. There being no reason for delay, the Clerk of the Court is hereby directed pursuant to Ala.R.Civ.P.54(b), to enter this order as a FINAL JUDGMENT. Subject to the terms and conditions of the Stipulation, Plaintiffs counsel, heretofore approved by the Court as Class Counsel, being Jere Beasley, Beasley, Wilson, Allen, Main & Crow, P.C. and Walter R. Byars, Steiner, Crum & Baker, are jointly awarded \$ ____ in full payment of all attorneys' fees and \$ ____ in full payment of all expenses incurred or to be incurred from this action, which will be paid by Defendant Liberty National Life Insurance Company to the Escrow Agent in accordance with the terms of the Escrow Agreement and the Stipulation of Settlement, said attorney's fees together with interest or investment proceeds to be disbursed in accordance with and subject to the terms and conditions of the Stipulation and the Escrow Agreement.

10. Subject to and in accordance with the terms of the Stipulation, Court costs are taxed against Defendant

Liberty National Life Insurance Company, which costs shall include all fees and expenses of actuarial or other experts or consultants employed by Class Counsel hereby awarded in the total amount of \$ ____ as fees, and \$ ____ as expenses. Pursuant to Paragraph 11 hereof, this Court reserves jurisdiction to award additional fees and expenses set forth in the Stipulation of Settlement.

11. This Court reserves and maintains continuing jurisdiction over all matters relating to the Settlement or the consummation of the Settlement; the validity of the Settlement; the construction and enforcement of the Settlement and any orders entered pursuant thereto; any disputes which may arise between Class Members with respect to the persons entitled to receive the proceeds of any amounts payable to Class Members under the Stipulation; and the entry and enforcement of this FINAL JUDGMENT, including, in the event of reversal, vacation, or modification of this final judgment, jurisdiction to reinstate all claims dismissed or claims, actions, causes of action and liabilities released pursuant to paragraph 5 hereof; to tax court costs (subject to the terms and conditions of the Stipulation) which shall consist of all expenses for the Class notice, fees and expenses of actuarial or other experts or consultants, fees and expenses of the Special Master; and all other matters pertaining to the Settlement or its implementation and enforcement.

The Court has set forth its Findings of Fact and Conclusions of Law in a separate order entered contemporaneously herewith.

Done this ____ day of ____ 1993.

CIRCUIT JUDGE

APPROVED AS TO FORM:

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[Names And Telephone Omitted In Printing]

January 26, 1994

VIA HAND DELIVERY

The Honorable William H. Robertson
Judge, Circuit Court
Barbour County Courthouse
Clayton, Alabama 36016

RE: Robertson v. Liberty National
Case No. CV-91-021

Dear Judge Robertson:

We today have filed the transcript of the trial in *Edith N. McAllister, et al. v. Liberty National Life Insurance Co. et al.*, CV-92-4085, Circuit Court of Mobile, Alabama, and a copy of Plaintiff's trial exhibits. In this letter we refer the Court to portions of the transcript which we believe are particularly pertinent to the Court's consideration of the fairness of the proposed settlement in this case.

1. Medical Evidence

The most important evidence considered by the jury in the *McAllister* case was the testimony of the Plaintiff's medical experts, Dr. John E. Feldmann and Dr. Michael

Asher, and the Defendants' medical expert, Dr. Michael Meshad. Dr. Feldmann, who is a board certified medical oncologist practicing in Mobile, outlined the history and development of the treatment of cancer with chemotherapy. This testimony provides an overlay to Liberty National's claims experience and demonstrates that, as chemotherapy began to be utilized more frequently and as more expensive and effective chemotherapy drugs were introduced, Liberty National's claims costs on the unlimited benefits for radiation, chemotherapy and prescription drugs skyrocketed.

Dr. Feldmann testified that, in his experience, 50%-60% of cancer patients receive chemotherapy and 65%-80% of cancer patients receive radiation, chemotherapy or both. Dr. Feldmann explained how cancer patients are treated with chemotherapy. According to Dr. Feldmann, over 95% of cancer patients who are treated with chemotherapy receive chemotherapy from a doctor, nurse or technician in office, outpatient or hospital setting and less than 5% receive prescription chemotherapy at home. The vast majority of chemotherapy patients thus are affected by the \$500 cap and only a very small minority utilize the prescription chemotherapy benefit in the new policies. Dr. Feldmann testified that all chemotherapy patients, whether they are treated as outpatient or whether they are prescribed chemotherapy at home, are prescribed pain medication, antibiotics and anti-nausea and diarrhea medicine. Dr. Feldmann testified about the typical costs of these drugs. For example, one of the most common anti-nausea drugs, zophran, costs \$320 for each dose. The cost of morphine can be as much as \$1,000

a month. Dr. Feldmann's testimony emphasizes how Liberty National cut its claims costs at the expense of its policyholders by eliminating coverage for non-chemotherapy prescription drugs in the "new" policies.

Dr. Feldmann also reviewed a number of prescriptions he had written for common chemotherapy programs of treatment which we had priced by the Providence Cancer Center in Mobile. These prescriptions [sic] demonstrate that \$500 a day is not adequate to cover the cost of chemotherapy, now or when the new policies were introduced. For example, the daily cost of the chemotherapy regimen commonly prescribed for ovarian cancer is \$1,603.80.

Dr. Feldmann testified that the unlimited benefits for radiation, chemotherapy and prescription drugs in Liberty National's old policies were material, valuable benefits and that overall the older Liberty National policies were more valuable, superior policies. Dr. Feldmann testified that, in his opinion the new benefits Liberty National added, including the dread disease benefit, do not begin to make up the loss of the unlimited benefits which Liberty National limited or eliminated in the new policies.

Dr. Asher, a board certified radiation oncologist who practices in Mobile, outlined the history of treating cancer with radiation and described the most common types of cancer treated with radiation. He explained how radiation treatments are administered and that cancer patients who are treated with radiation are charged by the treatment center on the first day for a consultation, simulation, preparation of a custom block, a computer plan, port

films, a CT planning scan, diode measurements, a physics chart check and for a "treatment." The patient is also charged by his physician for these same services.

Dr. Asher had prepared a number of prescription [sic] for common treatments for cancer which were priced by the Providence Cancer Center. He testified that, for example, with respect to the treatment for bladder cancer, on the first day of treatment the patient is charged \$1,608.00 by the Cancer Center where the treatment is administered. The patient also receives a charge from the treating oncologist for each of the items enumerated above and for his office, these charges for the first day of treatment for bladder cancer would total \$2,090. Thus, on the first day of treatment for bladder cancer, a patient is charged by the physician and the treatment center a total of \$3,698. While the patient's daily treatments for the next 24 days would only result in charges of \$254 for the treatment, on the 25th day and again on the 32nd day of treatment the patient receives a "boost" and is charged again for all but one of the items charged on the first day. A patient thus has significant exposure over \$500 on at least three days of his treatment.

Dr. Asher testified about the pain medication, anti-nausea and anti-diarrhea medication and antibiotics customarily prescribed to patients who receive radiation and the cost of these drugs. He noted that patients receiving radiation are often also prescribed steroids, anti-depressants and sleeping pills. He reviewed specifics [sic] costs of these drugs, which can run several hundred dollars a month.

Dr. Asher testified that greater than 50% of cancer patients receive radiation and that another 25% receive chemotherapy. In his opinion 70%-75% of cancer patients receive radiation, chemotherapy or both. He noted that today only 50% of cancer patients are cured and that 30%-50% of cancer patients come back for radiation multiple times. He explained that a cancer patient's need for drugs outside the hospital materially increases for that portion of cancer patients who are not cured and who don't survive and that these costs increase exponentially as a patient's condition worsens. Dr. Asher testified that the unlimited benefits for radiation, chemotherapy and prescription drugs were material and valuable benefits.

Even Dr. Meshad, the medical oncologist called as an expert by Libery [sic] National, testified that, in 1987, when Mrs. McAllister's policy was exchanged, \$500 a day was not an adequate amount to cover charges for chemotherapy and is not adequate today. Dr. Meshad's opinion was that, if you are diagnosed with cancer, you are better off with the old policy with unlimited benefits.

Liberty National has contended throughout this litigation that \$500 a day was adequate to cover the cost of radiation and chemotherapy in 1986 when the new policies were first introduced and that it is still adequate today. This contention simply is not borne out by any of the medical testimony.

2. Testimony of John Samford

We also urge your Honor to note the testimony of John Samford, a former president of Liberty National, in regard to the profits Liberty National made on the older policies with unlimited benefits from the time they were

initially sold until the loss ratios on these policies began deteriorating in the early 1980's. Liberty National made millions of dollars on premiums paid by policyholders who held these old policies during the 1970's and early 1980's and, when loss ratios on these policies began to deteriorate and the policies became unprofitable, Liberty National switched the policyholders who had the unprofitable old policies to the new policies. When the Court is considering Liberty National's profit from the cancer exchange plan, the profits Liberty National made from these policyholders during the many, many years that these policyholders paid premiums before their policies were exchanged must be taken into account.

3. Testimony of Wil Thornthwaite

We advised your Honor at the pre-hearing conference held on January 19, 1994, that the expert witness who testified on behalf of the plaintiffs in the *McAllister* case was on call. Counsel for Liberty National and class counsel agreed that, in the interest of conserving the Court's time, we could submit at the Hearing an affidavit summarizing Mr. Thornthwaite's testimony at the *McAllister* trial. Mr. Thornthwaite's affidavit was marked into evidence by the Clerk at the conclusion of the hearing on Monday, January 24, 1994. We have enclosed for your Honor's reference a copy of the affidavit.

Mr. Thornthwaite reviewed the actual claims paid by Liberty National under a group of the old policies by benefit category with the claims paid under a comparable group of the new policies for the years 1991 and 1992. As is set forth in his affidavit, he concluded that the average benefits paid per policy by Liberty National under the

old policies for these two years was greater than the average benefits paid per policy under the new policies. His computations also demonstrate that the percentage of the total benefits Liberty National paid for radiation, chemotherapy and prescription drugs was greater under the old policies than under the new policies and that Liberty National successfully shrank the amount of claims dollars it was paying on the unlimited benefits.

Mr. Thornthwaite has experience in marketing insurance policies and, in his opinion, the cancer exchange programs were unfair to Liberty National's policyholders. Finally, Mr. Thornthwaite analyzed the premiums paid by Mrs. McAllister for her policy and for her daughter's policy and his calculations demonstrate the extent to which Liberty National increased the premium dollars it collected by moving policyholders from one age bracket to another through the cancer exchange plan.

We urge the Court to carefully review the medical testimony, Mr. Samford's testimony and Mr. Thornthwaite's testimony in the *McAllister* trial.

Respectfully submitted,
 ARMBRECHT, JACKSON,
 DeMOUY, CROWE, HOLMES
 & REEVES
 By: /s/ M. Kathleen Miller
M. Kathleen Miller

MKM/rm

Enclosure

cc: All Counsel of Record
 Clerk's Office (for court file)

IN THE CIRCUIT COURT OF
 BARBOUR COUNTY, ALABAMA
 CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)
 individually and on behalf of a class,)
 Plaintiffs,) CIVIL ACTION
 v.) NO. CV-92-021
 LIBERTY NATIONAL LIFE)
 INSURANCE COMPANY,)
 Defendant.)

MOTION OF LIBERTY NATIONAL WITH CLASS
 COUNSEL'S CONSENT FOR AN ORDER CERTIFYING
 THIS ACTION AS A CLASS ACTION FOR SETTLEMENT
 PURPOSES PURSUANT TO ALABAMA RULES OF
 CIVIL PROCEDURE 23(b)(1)(A), 23(b)(1)(B),
 AND 23(b)(2)

(Filed January 26, 1994)

The defendant in the above-captioned action, Liberty National Life Insurance Company, with the consent of class counsel, moves that this Court enter an order certifying this action as a class action for settlement purposes pursuant to Alabama Rules of Civil Procedure 23(b)(1)(A), 23(b)(1)(B), and 23(b)(2).

In support of this motion, the defendant asserts that the evidence presented to the Court in the January 20, 1994 fairness hearing, the briefs submitted to the court and the totality of the circumstances and the record, show that if this action were not maintained as a class action, separate suits would create a risk of inconsistent adjudications, and would as a practical matter be dispositive of

the interests of other class members or would substantially impede their ability to protect their interests. Moreover, the defendant in this action is alleged to have acted on grounds generally applicable to the class, and this Court's earlier order certifying this action as a class action pursuant to A.R.C.P. 23(b)(2) remains appropriate.

Class Counsel has been orally informed that this motion would be filed and has orally indicated that Class Counsel have no objection to additional certification of the Class Action for purposes of settlement pursuant to A.R.C.P. 23(b)(1).

Attached is an order proposed by counsel for Liberty National for the Court's consideration. Class counsel has not reviewed this proposed order prior to its filing.

WHEREFORE, PREMISES CONSIDERED, the defendant moves this Court to enter an Order declaring that this action be maintained as a class action for settlement purposes pursuant to A.R.C.P. 23(b)(1)(A), 23(b)(1)(B), and 23(b)(2).

/s/ James W. Gewin/JWD
JAMES W. GEWIN

/s/ Michael R. Pennington/JWD
MICHAEL R. PENNINGTON

/s/ James W. Davis
JAMES W. DAVIS

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing on:

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by placing a copy of same in the United States Mail, first-class postage prepaid and addressed to their regular mailing address, on this 26th day of January, 1994.

/s/ James W. Davis
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IN THE CIRCUIT COURT FOR
 BARBOUR COUNTY, ALABAMA
 Clayton Division

CHARLIE FRANK ROBERTSON,)
 for himself, and in his)
 representative capacity for the)
 class of persons described)
 herein,)
 Plaintiff) Case Number:
 vs) CV-92-021
 LIBERTY NATIONAL LIFE)
 INSURANCE COMPANY,)
 Defendant)

ORDER AND JUDGMENT CONDITIONALLY
 APPROVING CLASS ACTION SETTLEMENT

(Filed February 4, 1994)

A hearing having been held before this Court on January 20, 21, and 24, 1994, pursuant to the previous Orders of this Court, said hearing having been held on the issue of whether this Court should approve as fair, adequate and reasonable a settlement of this action upon the terms and conditions of the Stipulation and Agreement of Compromise and Settlement heretofore executed by the named plaintiff, class counsel, Defendant Liberty National Life Insurance Company, and Defendant's counsel, as thereafter modified, ("Stipulation" or "Settlement"); it appearing that due notice of said settlement hearing was given in accordance with the terms of this Court's previous Orders; the Court having determined that the notice to the class, as described in the previous Orders of this Court, was the best notice practicable

under the circumstances, and that said notice fully complies with all requirements of due process and Alabama Rule of Civil Procedure 23; the respective parties having appeared in person and by their attorneys of record; various objectors to the settlement having appeared (or having been given the opportunity to appear) in person or by their attorneys of record; the Court having received and considered extensive arguments, evidence, and affidavits and written submissions in connection with the proposed compromise and settlement of the action; the attorneys for the respective parties and the objectors having been heard; and an opportunity to be heard having been given to all of the persons requesting to be heard in accordance with the Orders of this Court and the agreements of counsel made at the fairness hearing which convened on January 20, 1994, after a preliminary hearing had taken place on January 19, 1994; and based on the totality of the record and the totality of the testimony of live witnesses heard and considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. For purposes of considering, approving and effectuating the Stipulation of Settlement and to fairly and adequately protect the interests of the members of the class, this Court has previously ordered, and hereby orders and confirms, that this action is to be maintained as a class action pursuant to Ala.R.Civ.P. 23(b)(2), for a Plaintiff Class consisting of:

All persons who now or in the past were insured under any cancer policy which (1) was issued by Liberty National Life Insurance Company ("Liberty National") on or before August

29, 1986, and (2) which provided benefits for radiation, chemotherapy, prescription chemotherapy drugs, and other out-of-hospital prescription drugs without monetary limits, and (3) was paid and in force (or in the grace period) on or after August 29, 1986, regardless of whether such policy remains in force, thereafter lapsed or was replaced by a different Liberty National cancer policy after that date; provided, however, that (i) any insured who is or was a named plaintiff in any separate lawsuit which was filed on or before March 10, 1993 and which alleges fraud, concealment, failure to disclose or misrepresentation in connection with the purchase, sale, issuance, exchange or replacement of any one or more Liberty National cancer insurance policies is excluded from the Class unless such lawsuit has been voluntarily dismissed without prejudice on or before the date this Settlement is finally approved by the Circuit Court of Barbour County, Alabama; (ii) any insured whose "old policy" lapsed prior to August 29, 1986 and was not thereafter reinstated (after payment by the insured of all delinquent premiums) by Liberty National is excluded from the Class; and (iii) any insured whose first Liberty National cancer policy was a new policy form issued after August 29, 1986 is excluded from the Class.

2. On or about January 26, 1994, Liberty National Life Insurance Company filed a motion seeking an additional certification of the settlement class pursuant to [sic] Rule 23(b)(1)(A) and 23(b)(1)(B). The Court finds this to be essentially a request for an amendment seeking to conform the class certification to be evidence actually submitted (and the testimony presented) at the Fairness Hearing. The Court hereby finds that the requirements of

Rule 23(b)(1)(A) and 23(b)(1)(B) are satisfied based upon the totality of the record. The Court finds for purposes of settlement that if this action were not maintained as a class action, Liberty National could very likely be placed under inconsistent directives. An individual class member in a separate suit could request and obtain equitable relief requiring Liberty National to reform the new policies in a certain way, or to replace the new policies with the old, and Liberty National may defeat a similar request in another suit. Equally possible is the risk that Liberty National could be subject to an inconsistent injunction in a suit brought by a different class member. Furthermore, any injunction requiring "pooling" of different policy groups for purposes of premium increases would necessarily affect the premiums and other interests of insureds other than the named plaintiff, as would any injunction involving reinstatement of old policies or reformation of new policies. Moreover, there is a substantial risk that separate lawsuits could subject Liberty National to attempts by various class members in individual lawsuits to seek multiple punishment against Liberty National for the same alleged conduct that is at issue here.

3. The Court finds for purposes of settlement that the statutory net worth of Defendant Liberty National Life Insurance Company ("Liberty National") is approximately \$327,000,000. The Court further finds that the assets making up said statutory net worth constitute a "limited fund" subject to depletion by individual lawsuits brought by named insured class members (or their additional insured family members) under approximately 400,000 cancer policies if this action were not maintained as a class action. Although the fund is large, so is the

class. Even a small monetary award to each class member would deplete the fund, especially considering the cost to Liberty National of defending separate actions. Moreover, there is a substantial risk that a succession of individual punitive damage suits, if successful, could have the effect of placing Liberty National in receivership or rehabilitation proceedings pursuant to the insurance code of the State of Alabama (or other states) long before its total assets are depleted.

4. The Court further finds for purposes of settlement that, pursuant to the Due Process Clause of the United States Constitution and *Green Oil v. Hornsby*, 539 So.2d 218 (Ala. 1989), and similar authorities in other jurisdictions, if individual damage suits were successful, there is a virtual certainty that before each of the class members insured under the approximately 400,000 cancer policies at issue have the opportunity to bring a suit against Liberty National to a final judgment, Liberty National would be ruled to have been punished enough for the alleged conduct at issue in this action, and to therefore be immune from any further liability for punitive damages. Therefore, if some class members were able to obtain a verdict against Liberty National for punitive damages, at some point, later class members would be unable to obtain punitive damages, even if funds remained to pay those later class members.

5. The Court finds for purposes of settlement that, for the reasons stated above, individual suits (if successful) could, and in all probability would, result in a determination that "as a practical matter would be dispositive of the interests of other [class] members . . . or substantially impede their ability to protect their interests."

Ala.R.Civ.P. 23(b)(1)(B). The Court further finds for purposes of settlement that this class action settlement, if approved as the Court intends to modify it, and if those modifications are accepted by the named plaintiff, Class Counsel, and Defendant Liberty National Life Insurance Company, will result in the consumption and removal of any and all profit or gain that Liberty National could legitimately be said to have made from the cancer exchange program, and therefore will result in findings that could well be dispositive of future punitive damage claims under the Due Process Clause of the United States Constitution and under *Green Oil v. Hornsby*, 539 So.2d 218 (Ala. 1989), as well as similar authorities in other jurisdictions.

6. For all of the reasons stated above, the Court finds for purposes of settlement that all requirements of Ala.R.Civ.P. 23(b)(1)(A) and 23(b)(1)(B) are met, and at the same time reaffirms that for purposes of settlement all requirements of Ala.R.Civ.P. 23(a) and 23(b)(2) are met. The Court therefore finds that this action is due to be and is hereby certified and maintained as a class action for purposes of settlement pursuant to Ala.R.Civ.P. 23(b)(1)(A), 23(b)(1)(B), and 23(b)(2), by the Named Plaintiff as Class Representative and by the Named Plaintiff's counsel as Class Counsel.

7. The Court expressly finds for purposes of settlement that the class has so many members that joinder is impracticable; that there are questions of law and fact common to the class; that the claims of the Named Plaintiff are typical of the claims of the class; that the representative parties have fairly and adequately protected the interests of the class and will continue to do so; that,

assuming the allegations of the complaint (which Liberty National denies) to be true, Liberty National has acted on grounds generally applicable to the class, thereby making appropriate final equitable and injunctive relief with respect to the class as a whole; that the nature of the interests of the class members, the nature of the settlement, and the fact that the vast majority of class members have not suffered any denial of benefits or suffered any actual out-of-pocket monetary losses or damages at this time (other than the allegation of increased premiums made by certain objectors), make this action inappropriate for certification under Ala.R.Civ.P. 23(b)(3); and that maintenance of this action as a no-opt-out class action pursuant to Rule 23(b)(1) and 23(b)(2) is superior to any other method of proceeding with these claims.

8. Based upon the Court's findings of fact and conclusions of law, which will be entered in due course, the Court has found that the settlement, if modified in certain respects, is fair, reasonable and adequate and ought to be approved. The Court finds that the following modifications to the proposed settlement, if accepted within fourteen days of this order by the Named Plaintiff and Class Representative, Class Counsel and Defendant Liberty National Life Insurance Company, will make the settlement fair and result in final approval of this settlement by this Court:

(a) The provision pertaining to restitution, (Paragraph II-10 of the Stipulation) shall be amended to provide for 150% restitution (in lieu of 100% restitution) on the terms set forth in the Stipulation, with said restitution to be applied only to claims incurred prior to June 16,

1993. The Court finds that this modification will add an additional \$1,000,000 in estimated value to the settlement.

(b) The "Supplemental Extracontractual Monetary Relief Fund for Certain Class Members" set forth in II-12 of the proposed settlement shall be amended so that said fund, which the Court finds to be punitive in nature, shall be increased from \$3,000,000 to \$9,000,000, all other terms and provisions of II-12 of the Stipulation to remain unchanged.

(c) The "Incidental Monetary Settlement Fund for Class Members Who Submitted Certain Claims Under New Policies" set forth in II-9 of the Stipulation shall be amended to increase the fund provided therein, which the Court again finds to be punitive in nature, from \$1,000,000 to \$2,000,000. All other terms and provisions of II-9 of the Stipulation shall remain unchanged.

(d) The premium freeze provided by II-8 of the Stipulation shall be amended to read as follows:

"Pursuant to the Settlement, an Injunction will be entered against Liberty National prohibiting Liberty National from increasing premiums for any old policies of Class Members currently in force and for any new policies of Class Members currently in force prior to the later of the following dates: January 1, 1996; one year from the date of entry of final judgment by this Court; or one year from the date of entry of final judgment by the Alabama Supreme Court in the event of any appeal, any petition for certiorari to the United States Supreme Court notwithstanding. Thereafter, the percentage of any premium rate increase for old policies of Class

Members shall not exceed the percentage of premium rate increases for new policies of Class Members. Liberty National will not implement and is enjoined from implementing any rate increase on the policies of Class Members that results in a projected future incurred loss ratio (incurred claims divided by earned premiums) of less than 55%, calculated on the basis of annual premiums. The requirements of this paragraph do not apply with respect to persons who are not Class Members."

The Court finds that this modification is necessary to remove any opportunity for Liberty National to recover the costs of this settlement through future rate increases, and to effectively preclude Liberty National from so doing. The Court finds that this change in the premium freeze provisions of the proposed settlement adds a value of at least \$6,000,000 to the value of the proposed settlement.

(e) The reinstatement provisions of II-5 of the proposed settlement shall be amended as heretofore provided in the letter of December 10, 1993, executed by Class counsel and counsel for Liberty National Life Insurance Company, a copy of which is attached hereto as Exhibit A.

(f) The proposed settlement shall further be modified to require Liberty National to send a notice to all persons who are then Named Insureds under old policies (as that term is defined in the Stipulation) and who have not suffered cancer during the period the old policies were in force, informing such policyholders that they shall have the option of either keeping the "old policy" they currently hold or exchanging that policy for the 1990

series "Cancer Care Plus" version of the "new policy", as reformed pursuant to the proposed settlement. The notice shall further inform said policyholders that, if the old policy is exchanged to a "new policy", then the "new policy" will require payment of premiums based upon the Class Member's age at the time of the exchange to the new reformed policy, at the then-current premium rates, subject to the premium freeze provisions of the settlement. Said notice shall be submitted to the Court for approval within twenty-one days following final binding affirmance of the final judgment of this Court, or within twenty-one days of the expiration of the time for appeal in the event no appeal is taken. After said notice has been approved by the Court, it shall be mailed to all "old policyholders" contemplated by this modification, and said notice shall give said policyholders at least sixty days in which to exercise their option to exchange the "old policy" for the reformed version of the 1990 Series "Cancer Care Plus" new policy.

(g) The settlement shall be modified to explicitly provide that the reformation provided by Paragraph II-6 of the proposed settlement shall have an effective date of June 16, 1993, even though the injunction requiring said reformation shall not take effect until the final binding affirmance of this Court's final judgment, or, if no appeal was taken from this Court's final judgment, upon the expiration of the time for appeal. The Court finds that this modification to the proposed settlement adds an additional value of at least \$2,000,000 to the proposed settlement.

9. The Court finds that the foregoing modifications to the proposed settlement would result in the addition of

at least \$16,000,000 in additional value to the proposed settlement. The Court further finds that the value of the proposed settlement to Class Members, and the cost of the proposed settlement to Liberty National, was at least \$39,000,000 prior to these modifications. With these modifications, the Court finds that the value of the proposed settlement would be not less than \$55,000,000.

10. Liberty National Life Insurance Company, Named Plaintiff/Class Representative and Class Counsel shall have fourteen days from the date of entry of this order in which to inform the Court as to whether they will accept the foregoing modifications. If parties do not accept the foregoing modifications, the Court reserves the right to disapprove the proposed settlement. In determining that the foregoing modifications should be made to the proposed settlement, the Court has determined that, with such modifications, the cost and value of the proposed settlement is sufficient to remove (and indeed exceed) any and all profit or gain which Liberty National Life Insurance Company could legitimately be said to have made from the cancer exchange program alleged in this action. Therefore, with such modifications, the Court finds that the cost and value of this settlement will be sufficient to punish Liberty National for the entirety of the effects of the alleged cancer exchange programs and the conduct involved therein. The Court further finds that, with such modifications, the proposed settlement, including both the monetary provisions and the equitable provisions, will constitute sufficient deterrence to Liberty National Life Insurance Company from engaging in conduct of the type alleged herein in the future, particularly in light of the broad and sweeping injunctions contained

in the proposed settlement. The Court finds that those injunctions effectively place Liberty National Life Insurance Company under the spectre of being held in contempt of this Court if Liberty National violates this Court's injunctions with respect to Class Members, or if Liberty National fails to honor its obligations under the settlement. The deterrent effect of these injunctions must be weighed in connection with the fairness of this settlement. Taking the totality of the settlement and the totality of the record into consideration, this Court finds that, if the modifications to the settlement are accepted as provided herein, this settlement will be approved, and, in that event, the Court finds that Liberty National will have suffered the full amount of punishment and deterrence that is permissible under the Due Process Clause of the United States Constitution, *Green Oil v. Hornsby's Grocery*, 539 So.2d 218 (Ala. 1989), and similar authorities. If the proposed settlement is accepted as modified by Liberty National, Named Plaintiff/Class Representative and Class Counsel, the Court finds that no further punishment in the way of punitive damages would be appropriate in any other lawsuit seeking punitive damages based upon the alleged cancer exchange programs. In reaching these determinations, the Court notes that, in light of the fact that the claims of many class members would be barred by statutes of limitation; by the death of certain class members; or by other legal defenses, all of which are effectively waived for purposes of this settlement, a great deal of the equitable relief as well as virtually all of the monetary relief provided for in this settlement must be considered punishment for purposes of *Green Oil*.

11. If the foregoing modifications are approved, this Court will enter final judgment incorporating this order by reference, and adopting paragraphs 4 through 11 of the proposed Order and Final Judgment appended to the Class Notice, with appropriate changes to reflect the foregoing modifications. The Court will order counsel for Defendant Liberty National and counsel for Named Plaintiff and the Class to prepare an appropriate proposed Order and Final Judgment, together with proposed Findings of Fact and Conclusions of Law to be adapted by the Court to conform with the Court's own contemplated findings and conclusions, both reflecting the foregoing modifications, for submission to the Court within ten days of such acceptance.

12. This Order is not final, and shall not become so until an Order and Final Judgment are entered by this Court in accordance with the foregoing paragraph. The Court further intends to enter Findings of Fact and Conclusions of Law in a separate order which, when entered, will become a part of this Order.

DONE this the 4th day of February, 1994.

/s/ William H. Robertson
CIRCUIT JUDGE

IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON, §
Plaintiff,
§
vs. §
LIBERTY NATIONAL LIFE §
INSURANCE COMPANY,
§
Defendant. §
§
CASE NO.
§
CV-92-021
§

OBJECTORS' MOTION TO MODIFY COURT ORDER
(Filed February 24, 1994)

Come now certain objectors listed below and move the Court to modify its final order (assuming said order will, subject to certain terms and conditions certify a class and approve a settlement) in the same respects, to the same extent and on the same grounds set forth in the "Motion to Modify Court Order" heretofore served by class counsel on or about February 15, 1994. Said motion by class counsel is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth herein.

Objectors further move the Court to delete from the Release to be a part of the Court's final order the agents or employees of Liberty National who committed the wrongful acts (including misrepresentations, suppressions, incomplete comparisons, etc.) that resulted in the damage complained of by the objectors. As grounds for deleting said agents and employees from the Release, objectors set down and assign the following:

1. Class counsel did not sue any such agents or employees in this action.
2. The proposed settlement between class counsel and Liberty National, according to class counsel, was based upon many factors, one of which was the funds available from Liberty National with which to satisfy judgments or settlements. At no time was the net worth or available assets of any agent or employee (or any insurance carrier that may have provided coverage for the claims asserted or to be asserted against any such agent or employee) considered to be a factor in the settlement negotiations between Liberty National and class counsel.

3. There has been no discovery regarding the number of different agents or employees involved, what assets or net worth they may possess, what insurance coverage they may have for the claims asserted or to be asserted against them, or any other aspects of the collectability of any judgment as against any such agents or employees.

This motion is filed without waiver of (and while insisting upon) all of the previous objections filed by these objectors, including those objections concerning the propriety of certifying any class and the propriety of the settlement in question.

/s/ Bill Roedder, Jr.
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CERTIFICATE OF SERVICE

I do hereby certify that I have on this day, February 23, 1994, served a copy of the foregoing pleading on counsel of record for all parties to this proceeding, by placing same in the United States mail, properly addressed and first class postage prepaid.

/s/ Bill Roedder, Jr.

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**IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division**

CHARLIE FRANK ROBERTSON, *
for himself, and in his *
representative capacity for the *
class of persons described herein, *
* Plaintiff, *
* Case Number: *
* CV-92-021
* vs. *
LIBERTY NATIONAL LIFE *
INSURANCE COMPANY, *
* Defendant. *

MOTION TO MODIFY COURT ORDER

Plaintiff, by and through Class counsel, moves the Court for an Order (1) deleting the entity designated as the Torchmark Corporation from the Release to be part of the Court's final Order and modifying all prior Orders and documents herein which purport to release Torchmark from liability, and (2) limiting the actions, causes of action, and claims to be released to those alleged in the amended complaint, to-wit: fraud claims arising directly out of the exchange by Liberty National of existing cancer policies through fraudulent misrepresentations concerning the relative value of the policy forms or fraudulent suppression related to the failure to advise insureds of the limitations on benefits for radiation, chemotherapy, prescription chemotherapy drugs, and out-of-hospital prescription drugs contained in the new policies. As grounds for the motion, Plaintiff states:

[Exhibit A]

1. Class counsel did not sue Torchmark in this action and have based all negotiations on the activities of Liberty National and its employees.

2. The proposed settlement with Liberty National by class counsel was based upon many factors, one of which was the net worth of Liberty National. At no time was the net worth of Torchmark considered to be a factor.

3. If, in fact, the assertions and testimony by Liberty National are correct (that Torchmark had no involvement in the alleged fraud), there can be no prejudice to Torchmark from the deletion.

4. There is no logical reason for the release of Torchmark, in addition to Liberty National, since Torchmark was never a party to this action.

5. The definition of claims, causes of action, and actions to be released was never intended by class counsel to be any broader than those restricted to fraud claims arising directly out of the exchange of cancer policies by Liberty National as described in Plaintiff's amended complaint.

6. It appears from evidence and materials submitted by objectors that there may be claims by insureds which are unrelated to those presented in this lawsuit but which arguably could be released by the broad language of the release proposed by Liberty National.

/s/ Jere L. Beasley
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all counsel of record *as listed below* by placing a copy of same in the United States Mail, first class, postage prepaid on this the 15th day of February, 1994.

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IN THE CIRCUIT COURT OF BARBOUR
COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBERTSON,)
Plaintiff,)
vs)
LIBERTY NATIONAL LIFE)
INSURANCE COMPANY)
Defendant.)

CASE NO.
CV-92-021

OBJECTORS' MOTION TO MODIFY COURT ORDER

(Filed February 28, 1994)

Come now certain objectors listed below and move the Court to modify its final Order (assuming said Order will, subject to certain terms and conditions, certify a class and approve a settlement) in the same respects, to the same extent and on the same grounds set forth in the "Motion to Modify Court Order" heretofore served by class counsel on or about February 15, 1994. Said motion by class counsel is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth herein.

Objectors further move the Court to delete from the Release to be a part of the final Order the agents or employees of Liberty National who committed the wrongful acts (including misrepresentations, suppressions, incomplete comparisons, etc.) that resulted in the damage complained of by the Objectors. As grounds for deleting said agents and employees from the Release, Objectors set down and assign the following:

1. Class counsel did not sue any such agents or employees in this action.

2. The proposed settlement between class counsel and Liberty National, according to class counsel, was based upon many factors, one of which was the funds available from Liberty National with which to satisfy judgments or settlements. At no time was the net worth or available assets of any agent or employee (or any insurance carrier that may have provided coverage for the claims asserted or to be asserted against any such agent or employee) considered to be a factor in the settlement negotiations between Liberty National and class counsel.

3. There has been no discovery regarding the number of different agents or employees involved, what assets or net worth they may possess, what insurance coverage they may have for the claims asserted or to be asserted against them, or any other aspects of the collectability of any judgment as against any such agents or employees.

This motion is filed without waiver of (and while insisting upon) all of the previous objections filed by these Objectors, including those objections concerning the propriety of certifying any class and the propriety of the settlement in question.

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IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
Clayton Division

CHARLIE FRANK ROBERTSON,*
for himself, and in his
representative capacity for the
class of persons described
herein, • Case Number:
• CV-92-021
• Plaintiff, •
vs. •
LIBERTY NATIONAL LIFE
INSURANCE COMPANY, •
Defendant. •

MOTION TO MODIFY COURT ORDER

Plaintiff, by and through Class counsel, moves the Court for an Order (1) deleting the entity designated as the Torchmark Corporation from the Release to be part of the Court's final Order and modifying all prior Orders and documents herein which purport to release Torchmark from liability, and (2) limiting the actions, causes of action, and claims to be released to those alleged in the amended complaint, to-wit: fraud claims arising directly out of the exchange by Liberty National of existing cancer policies through fraudulent misrepresentations concerning the relative value of the policy forms or fraudulent suppression related to the failure to advise insureds of the limitations on benefits for radiation, chemotherapy, prescription chemotherapy drugs, and out-of-hospital prescription drugs contained in the new policies. As grounds for the motion, Plaintiff states:

[Exhibit A]

1. Class counsel did not sue Torchmark in this action and have based all negotiations on the activities of Liberty National and its employees.
2. The proposed settlement with Liberty National by class counsel was based upon many factors, one of which was the net worth of Liberty National. At no time was the net worth of Torchmark considered to be a factor.
3. If, in fact, the assertions and testimony by Liberty National are correct (that Torchmark had no involvement in the alleged fraud), there can be no prejudice to Torchmark from the deletion.
4. There is no logical reason for the release of Torchmark, in addition to Liberty National, since Torchmark was never a party to this action.
5. The definition of claims, causes of action, and actions to be released was never intended by class counsel to be any broader than those restricted to fraud claims arising directly out of the exchange of cancer policies by Liberty National as described in Plaintiff's amended complaint.
6. It appears from evidence and materials submitted by objectors that there may be claims by insureds which are unrelated to those presented in this lawsuit but which arguably could be released by the broad language of the release proposed by Liberty National.

/s/ Jere L. Beasley
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IN THE CIRCUIT COURT FOR
 BARBOUR COUNTY, ALABAMA
 Clayton Division

CHARLIE FRANK, ROBERTSON, *
 for himself, and in his *
 representative capacity for the *
 class of persons described herein. *
 Plaintiff, *
 vs. * CASE NO.
 LIBERTY NATIONAL LIFE * CV-92-021
 INSURANCE COMPANY, *
 Defendant. *

OBJECTORS' MOTION TO MODIFY COURT ORDER
 (Filed March 2, 1994)

Comes now certain objectors listed below and move the Court to modify its final order (assuming said order will, subject to certain terms and conditions certify a class and approve a settlement) in the same respects, to the same extent and on the same grounds set forth in the "Motion to Modify Court Order" heretofore served by class counsel on or about February 15, 1994. Said motion by class counsel is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth herein.

Objectors further move the Court to delete from the Release to be a part of the Court's final order the agents or employees of Liberty National who committed the wrongful acts (including misrepresentations, suppressions, incomplete comparisons, etc.) that resulted in the damage complained of by the objectors. As grounds for

deleting said agents and employees from the Release, objectors set down and assign the following:

1. Class counsel did not sue any such agents or employees in this action.
2. The proposed settlement between class counsel and Liberty National, according to class counsel, was based upon many factors, one of which was the funds available from Liberty National with which to satisfy judgments or settlements. At no time was the net worth or available assets of any agent or employee (or any insurance carrier that may have been provided coverage for the claims asserted or to be asserted against any such agent or employee) considered to be a factor in the settlement negotiations between Liberty National and class counsel.
3. There has been no discovery regarding the number of different agents or employees involved, what assets or net worth they may possess, what insurance coverage they may have for the claims asserted or to be asserted against them, or any other aspects of the collectability of any judgment as against any such agents or employees.

This motion is filed without waiver of (and while insisting upon) all of the previous objections filed by these objectors, including those objections concerning the propriety of certifying any class and the propriety of the settlement in question.

/s/ John D. Richardson
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DAVID F. DANIELL
Attorney for Objectors

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 Kevin Morrow (as executor of Carol
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 executor of Largene C. Rodgers).

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I do hereby certify that I have, on this 28 day of Feb.,
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/s/ John D. Richardson

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**IN THE CIRCUIT COURT FOR
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CHARLIE FRANK, ROBERTSON, *
 for himself, and in his *
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5. The definition of claims, causes of action, and actions to be released was never intended by class counsel to be any broader than those restricted to fraud claims arising directly out of the exchange of cancer policies by Liberty National as described in Plaintiff's amended complaint.

6. It appears from evidence and materials submitted by objectors that there may be claims by insureds which are unrelated to those presented in this lawsuit but which arguably could be released by the broad language of the release proposed by Liberty National.

/s/ Jere L. Beasley
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IN THE CIRCUIT COURT FOR
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

CHARLIE FRANK §
ROBERTSON, for himself, and §
in his representative capacity §
for the class of persons §
described herein, §
Plaintiff, §
vs. §
LIBERTY NATIONAL LIFE §
INSURANCE COMPANY, §
Defendant. §

CASE NUMBER:
CV-92-021

BRIEF IN SUPPORT OF THE MOTIONS OF
OBJECTORS AND CLASS COUNSEL TO MODIFY
COURT ORDER TO DELETE TORCHMARK
CORPORATION FROM THE RELEASE

(Filed August 13, 1994)

Come now the undersigned counsel for certain Objectors and file this Brief in support of the motions of Objectors and Class Counsel seeking an Order deleting Torchmark Corporation ("Torchmark") from the Release to be part of the proposed settlement herein and modifying all prior Orders and documents herein which purport to release Torchmark from liability.

In conjunction with and in support of the grounds set forth in the above-referenced motions, the undersigned show unto the Court that evidence has been developed which demonstrates that Torchmark (the sole shareholder of Liberty National Insurance Company ("Liberty

National")) is exposed to liability for the cancer policy exchange programs ("CPEP") which are the subject of this litigation. As is discussed below, based on the evidence which has been developed to date, Torchmark's exposure to liability rests on its own conduct in connection with the CPEP, its failure to properly investigate claims arising out of the CPEP and its control of Liberty National. This evidence constitutes an initial showing in regards to Torchmark's exposure to liability and clearly imposes a duty upon this Court to refrain from allowing Torchmark to be released from all liability with respect to the CPEP absent payment of appropriate consideration.

A. **Torchmark is subject to liability for Liberty National's acts based upon Torchmark's domination and misuse of Liberty National which resulted in harm to Liberty National's policyholders.**

In Alabama, a parent corporation which owns all the stock of a subsidiary corporation may be held liable for the acts of the subsidiary if the parent so controls the operation of the subsidiary as to make the subsidiary a mere adjunct instrumentality, or alter ego of the parent and this control results in harm caused by the misuse of the subsidiary. *Duff v. Southern Railway Co.*, 496 So. 2d 760, 762 (Ala. 1986); *In re Birmingham Asbestos Litigation*, 619 So. 2d 1360, 1361 (Ala. 1993). Holding a parent corporation liable under these circumstances is commonly referred to as "piercing the corporate veil."

Determining the issues of control and misuse require extensive factual showings. In this vein, a noted commentator in the area of corporate law has recognized "that the determination of whether there are sufficient grounds for piercing the corporate veil ordinarily should *not* be disposed of by summary judgment, in view of the complex economic questions often involved, *especially if fraud is alleged.*" Fletcher CYC Corp. § 41.95 (Perm. ed.) (emphasis added). As is set forth in Objectors' motion for additional discovery filed on even date herewith, Objectors have not yet had an opportunity to fully develop the evidence against Torchmark. The discovery conducted to date, however, has unveiled sufficient evidence to demonstrate that Torchmark has exposure for liability on the ground that Liberty National and Torchmark were so interrelated that Torchmark dominated Liberty National and caused Liberty National to become a mere adjunct instrumentality and alter ego of Torchmark.

No one should know the interrelationship between Liberty National and Torchmark any better than John Samford. He was President and/or CEO of Liberty National and on the Board of Liberty National from 1982 through 1989; during this same time he was also on the Torchmark Board of Directors, and for the period 1989-1982 he was Executive Vice President and Associate General Counsel of Torchmark (John Samford Dep., pp. 6-8, 47; written responses of Torchmark to discovery propounded by Class Counsel, a copy of which, along with a copy of the discovery propounded by Class Counsel, is attached hereto as Exhibit A).¹ John

¹ The undersigned Objectors have not filed copies of the transcripts of the referenced depositions and the exhibits thereto which Objectors understand are being filed by Class

Samford testified that, throughout the time he served as President and/or CEO of Liberty National, he ultimately was answerable not to Liberty National, but to the Torchmark Board of Directors (John Samford Dep., p. 9). Mr. Samford, as CEO of Liberty National, periodically consulted and talked with various employees of Torchmark (John Samford Dep., p. 9). Moreover, he made reports from time to time to the Board of Directors of Torchmark regarding the operations of Liberty National (John Samford Dep., pp. 9, 10).

In addition to reporting to the Torchmark Board of Directors, John Samford reported to the Chairman of the Torchmark Board outside of the regular Board meetings (John Samford Dep., p. 11). Mr. Samford kept the Chairman of the Torchmark Board advised regarding significant events occurring within Liberty National (John Samford Dep., p. 12).

The Liberty National Board of Directors clearly did not function as anyone would expect a board of directors to function. For example, John Samford testified that, after he became president, the size of the Liberty National Board of Directors was reduced to three and it functioned only in an advisory or public relations capacity (John Samford Dep., pp. 48-49). Mr. Samford, as noted above, then reported to the Torchmark Board of Directors, not the Liberty National Board of Directors, and the Liberty National Board of Directors discontinued meeting, except in the form of paper meetings by unanimous consent (John Samford Dep., pp. 48-49).

Counsel. Objectors rely upon said depositions and exhibits in their entirety and reserve the right to file copies of the same if Class Counsel fails to do so.

From the records, the last meeting of the Board of Directors of Liberty National took place on February 26, 1985. (Minutes of the 56th Annual Meeting of the Board of Directors of Liberty National Life Insurance, February 26, 1985, a copy of which, along with copies of all consents by the members of the Board of Directors of Liberty National in Lieu of Meeting referred to herein, is attached hereto as Exhibit B.) Thereafter, records reflect that the Board of Directors of Liberty National agreed to operate without a formal meeting. (See Consent by Board of Directors of Liberty National in Lieu of Meeting, February 25, 1986, July 22, 1986, and February 26, 1987., attached as Exhibit B)

It is easy to see how the identity of the two corporations has blurred over time and is now non-existent. As Bob Stewart, a former President of Liberty National, testified before this Court "it is hard to distinguish between the two." (Robert Stewart, transcript p. 12).

C. B. Hudson, who has been a Torchmark Board Member since 1986, a Liberty National Board Member and President and/or CEO of Liberty National since 1990, and a Torchmark officer since 1992, supports John Samford's testimony. As an officer of Liberty National, Mr. Hudson reported and was responsible to the Torchmark Board of Directors, not the Liberty National Board of Directors. (Hudson Dep., pp. 9-10, 55; Torchmark's response to written discovery propounded by Class Counsel, attached as Exhibit A). Mr. Hudson further testified that the Liberty National Board of Directors has no real role (Hudson Dep., p. 54). In fact Mr. Hudson stated that the Liberty National Board of Directors does not even serve in an advisory capacity (Hudson Dep., p. 54).

Not just the President and CEO of Liberty National, but also other Liberty National officers report to the Torchmark Board of Directors (Hudson Dep., pp. 63-64).

Mr. Hudson testified that, as President and CEO of Liberty National, he reports any significant developments in the operations of Liberty National to the Torchmark Board (Hudson Dep., p. 21). New products are discussed in Torchmark Board meetings if a large volume of sales were expected (Hudson Dep., pp. 21-22). The 1990 CPEP, just as the 1986 CPEP, involved a large volume of policy exchanges (Hudson Dep., p. 31). Accordingly, as President and CEO of Liberty National, Mr. Hudson reported the 1990 CPEP to the Torchmark Board of Directors. (Hudson Dep., p. 31).

Similarly, as a member of the Torchmark Board in 1986, Mr. Hudson can recall Mr. Samford (then President and CEO of Liberty National) reporting to him and other Torchmark Board Members regarding the 1986 CPEP (Hudson Dep., p. 24-25). Subsequent to 1986, Mr. Hudson had a [sic] occasion to discuss lawsuits with Mr. Richey, then Chairman of the Board of Torchmark (Hudson Dep., pp. 57-58). Mr. Hudson received reports regarding these lawsuits from Liberty National's in-house counsel, Bill Barcliff on a prompt basis, and Mr. Hudson would in turn discuss them on occasion with Mr. Richey (Hudson Dep., pp. 57-58). The CPEP lawsuits alleging fraud began to be filed in 1990 (Torchmark's response to written discovery propounded by Class Counsel).

Although Torchmark obviously was aware of the CPEP as early as its inception and received complaints that it might involve massive fraud in (1990 and 1991) (at

the latest) there is no evidence that either Liberty National or Torchmark as [sic] since taken any steps, even to date, to rectify this situation. In fact, the various cancer policies apparently continue to be exchanged. This clearly evidences misuse of Torchmark's control of Liberty National. This misuse continues to cause harm to unsuspecting members of the public much like it caused harm to members of the Plaintiff Class by fraudulently stripping them of valuable benefits.

Torchmark can hardly contend that it was an entity separate and distinct from Liberty National and that it remained ignorant of the details regarding the operations of Liberty National. Liberty National officers and board members clearly possessed that detailed knowledge from their day-to-day operations as officers and directors of Liberty National, and some considerable number of these Liberty National officers and directors were also board members or officers of Torchmark. Consider the following:

I. Mr. Richey was an officer and director of Liberty National who also served as CEO of Torchmark and on the Board of Torchmark.

II. Mr. John Samford was an officer and board member of Liberty National, who also served as an officer and board member of Torchmark.

III. Mr. Ray was an officer of Liberty National, and also served as an officer of Torchmark.

IV. Mr. Lovin was an officer of Liberty National, and also served as an officer of Torchmark.

V. Mr. Graves was a board member of Liberty National, and also served as an officer of Torchmark.

VI. Mr. Hudson was an officer and board member of Liberty National, and also served as an officer and board member of Torchmark.

VII. Mr. Upchurch was an officer of Liberty National, and also served as an officer and board member of Torchmark.

VIII. Mr. Tucker a director of Liberty National, who also served as a director and officer of Torchmark. (Torchmark's response to written discovery propounded by Class Counsel).

The foregoing evidences complete domination and control of Liberty National by Torchmark. Further, Liberty National's status as mere adjunct instrumentality or alter ego of Torchmark is clear. Also clear is that Torchmark misused its control of Liberty National for the purpose of increasing its profits (and director bonuses) while causing harm to hundreds of thousands of policyholders.

In addition to the foregoing, the investment of Liberty National's assets, which are obviously very substantial, is handled by Torchmark (Hudson Dep., p. 66). Some 15 to 20 Liberty National officers (and this excludes directors) were on the Torchmark payroll. Many of the directors of Liberty National are also employees of Torchmark and when Torchmark employees perform duties for Liberty National, it is under the supervision of Torchmark management (see Torchmark's response to written discovery propounded by Class Counsel, attached as Exhibit A).

Yet another interrelationship between Torchmark and Liberty National is that Torchmark leases space in Liberty National's building, where Torchmark conducts its business; Torchmark uses aircraft that are owned by Liberty National; and Torchmark uses Liberty National clerical employees, Liberty National's computer and data processing equipment and furnishings provided by Liberty National. (See Torchmark and Liberty National responses to written discovery propounded by Class Counsel).

The compensation paid to Torchmark's directors was related to Liberty National's performance. In 1993, Torchmark paid Mr. Hudson a salary of \$650,000.00, a bonus of \$350,000.00 and other compensation of \$35,000.00. (Torchmark 1993 Proxy Statement, p.11, attached as Exhibit C). Mr. Hudson was also granted an option to purchase 35,000 shares of the common stock of Torchmark at a price of \$43.50 per share. (*Id.*) Hudson testified that his compensation was, in part, dependent upon the performance of Liberty National (Hudson Dep., p. 69-70).

In 1993, Torchmark paid Mr. Richey a salary of \$1,166,676.00, a bonus of \$833,324.00 and other compensation of \$137,162.00. (Torchmark 1993 Proxy Statement, p. 11, a copy of which is attached hereto as Exhibit C). Mr. Richey's 1993 compensation included stock options to purchase 62,000 shares of the common stock of Torchmark at \$43.50 per share. (*Id.*)

Some of the years Mr. Richey was CEO of Torchmark he received a bonus in addition to salary. (Richey Dep., p. 57). The bonus was based in part upon the realization of insurance operating goals of Torchmark subsidiaries, including Liberty National. (*Id.* at 57-58).

The Alabama Supreme Court has outlined the common circumstances showing that a subsidiary is the mere instrumentality of a parent corporation as follows:

- (a) The parent corporation owns all or most of the capital stock of the subsidiary.
- (b) The parent and subsidiary corporations have common directors or officers.
- (c) The parent corporation finances the subsidiary.
- (d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation.
- (e) The subsidiary has grossly inadequate capital.
- (f) The parent corporation pays the salaries and other expenses or losses of the subsidiary.
- (g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation.
- (h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own.
- (i) The parent corporation uses the property of the subsidiary as its own.
- (j) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation in the ladder's [sic] interest.

(k) The formal legal requirements of the subsidiary are not observed.

Duff v. Southern Railway Co., 496 So. 2d at 763. In adopting these factors, the Court stated that "[n]o one of these factors is dispositive; nor does the list exhaust the relevant factors." *Id.* at 763.

The evidence available to date in this case as outlined above demonstrates that at least seven of the eleven "circumstances" set forth in *Duff* exist between Torchmark and Liberty National. The available evidence certainly constitutes an initial showing that Liberty National was a mere instrumentality of Torchmark and that Torchmark has exposure to liability based upon its control, domination and misuse of Liberty National.

B. Torchmark is liable to the Plaintiff class for its own negligence in connection with the cancer policy exchange program.

The evidence outlined above indicates that Torchmark unquestionably had knowledge of the CPEP, was aware of its purpose and, in effect, supervised Liberty National's progress in carrying out the program. In light of the extent of Torchmark's knowledge and involvement with the CPEP, Torchmark either knew or should have known of the activities of Liberty National's agents and should have corrected their activities. A parent corporation can be liable for its own negligence, without regard to the traditional requirements of piercing the corporate veil, if it can be shown that the parent directly participated in the acts of the subsidiary. *See Anglo Eastern*

Bulkships, Ltd. v. Ameron, Inc., 556 F. Supp. 1198, 1201 (S.D.N.Y. 1982).

As outlined above, the President, CEO and other officers of Liberty National reported directly to and were ultimately responsible to the Board of Directors of Torchmark. That Board was all powerful and virtually ran all of the affairs of Torchmark and Liberty National. It was given virtually all powers of the corporation. (See Board of Directors Manual, Exhibit T2). Even the four standing committees of Torchmark were controlled by the Torchmark Board. The Executive Committee consisted of the Chairman of the Board, the President and three additional members that were elected by the Directors from among their own number. (See Board of Directors Manual, Exhibit T2). The Compensation Committee was elected by the Board of Directors from its own membership. (See Board of Directors Manual, Exhibit T2). The Audit Committee was also elected by the Directors from among their own number. (See Board of Directors Manual, Exhibit T2). Finally, the Finance Committee was similarly elected by the Directors from among their own number. (See Board of Directors Manual, Exhibit T2). All officers were elected by the Board and performed such duties as the Board directed. (See Board of Directors Manual, Exhibit T2). Accordingly, the Board of Directors of Torchmark in essence was Torchmark, and it was to this Board and this corporation that the Liberty National officers were responsible.

The Torchmark Board of Directors had many legal responsibilities, which it could not have fulfilled without making more inquiry than was made and without detailed, hands-on supervision of the Liberty National

officers, which the Board members contend they did not exercise. Their duties essentially required that they closely supervise the Liberty National officers and make thorough, competent inquiry where problems surfaced, such as the Stewart complaint (discussed hereinbelow) concerning massive fraud in connection with the CPEP. The members of the Torchmark Board clearly breached these duties. Accordingly, Torchmark must be held accountable for this conduct.

The responsibilities of the Board Members, as testified to by Yetta Samford (Yetta Samford Dep., p. 12, 67-68), and as shown in the Board of Directors Manual (Exhibit T2), are as follows: they owe a duty of care and a duty of loyalty; they were obliged to exercise due care and diligence in managing the affairs of the corporation; they were required to perform these duties in good faith and in a non-negligent manner; they were obliged to conduct themselves in the best interests of the corporation; and, in order to satisfy their fiduciary duties, the Directors were obliged to keep themselves informed as to the policies and affairs of the corporation and as to the acts of its officers. The policies and affairs of the corporation included the management of the officers of Liberty National and the conduct of the Liberty National business. The presidents and CEOs of Liberty National have testified that they were responsible to the Torchmark Board, not the Liberty National Board. Clearly the Torchmark Board undertook to supervise these officers and to hold them accountable for their failings. The duty of the directors included a duty to make reasonable investigation as to the veracity of information furnished. (Board of Directors Manual, Exhibit T2).

There is ample evidence reflecting Torchmark's knowledge and supervision of the CPEP. In addition to the evidence outlined above, Torchmark Board Member Yetta Samford has testified that there was a discussion by the Torchmark Board of Liberty National's cancer conversion program. (Y. Samford Dep., p. 40). He also recalled discussions at a Torchmark Board of Directors meeting concerning a very large increase in annual premium from the sale of Liberty National cancer insurance between 1985 and 1986. (Y. Samford Dep., p. 45). Yetta Samford testified that he was told that the reason for this very large increase was the marketing [sic] of a new and better policy. (*Id.* at 45-46). Yetta Samford testified that the Torchmark Board was told that the cancer conversion program would benefit the company and that it involved the marketing of a better policy. (*Id.* pp. 64-65).

On December 19, 1985 the Board of Directors of Torchmark were informed that the loss ratios on their cancer policies were declining resulting in increased policy obligations. (See Minutes of the Meeting of the Board of Directors of Torchmark, December 19, 1985, p. 10, attached as Exhibit B.) Thereafter, Torchmark was aware that Liberty National had introduced a new cancer policy which had produced sales of 6.2 million dollars in only two months of being on the market. (See Torchmark Management Report, October 31, 1986, p. 6., Exhibit T26). The Torchmark Management Report reflects that sales in the cancer line had increased from August 31, 1986 from \$1,033,000.00 annualized premium to \$5,708,000.00 ending October 31, 1986. (Torchmark Management Report, October 31, 1986, p. 8, Exhibit T26). The Management Report does not reflect any other product, whether health

or life, with such a drastic increase in sales. (*Id.*, Exhibit T26). By November 30, 1986, after only being on the market three months, the new cancer policy introduced in September had produced sales of 8.4 million dollars (net of replacement). (Torchmark Management Report, November 30, 1986, p. 6, Exhibit T25).

Torchmark was on notice that the 1990 CPEP had also produced enormous profits and that virtually all the increase in the second quarter of 1990 versus the second quarter of 1989 was due to cancer conversions resulting from the new cancer products which were introduced in the first quarter of 1990. (Minutes of the Board of Directors of Torchmark, July 26, 1990, p. 9, a copy of which is attached hereto as Exhibit D). In fact, Torchmark realized \$55.4 million in health sales in 1990 of which \$26.7 million was directly attributable to replacement of older cancer policies. *Id.*

John Samford testified as to the reasons for the CPEP. The loss ratios on the old cancer policy were too high, causing Liberty National to increase premiums substantially and frequently (John Samford Dep., pp. 17-18). Liberty National found this to be an undesirable development and determined that the cause of the high loss ratios under the old policies was that the benefits for chemotherapy and radiation were unlimited (John Samford Dep., pp. 18-19). Liberty National began to discuss and address this problem in 1985, the year before the CPEP was initiated (John Samford Dep., p. 19). The thought was (and this thought was acted on in August, 1986) that Liberty National should go to a new cancer policy with changes or caps on these benefits in order to avoid the high loss ratio problem experienced on the old

policies with unlimited benefits. (John Samford Dep., pp. 16-19).

There was more in the CPEP for Liberty National than reducing loss ratios, as attractive as this obviously was; if old policies were exchanged for new policies, this would increase the total revenues of Liberty National, and John Samford frankly testified that he wanted to see the old policies exchanged for the new policies (John Samford Dep., p. 33). Likewise, the agents must have been pushing the exchanges, because they received more in the way of commissions when the old policy was exchanged for the new policy, as opposed to the commissions they would have received if the old policy remained in effect. (John Samford Dep., p. 34). The far reaching implications of the CPEP are demonstrated by the fact that there were some 400,000 holders of the old cancer policy as of the time the CPEP was undertaken (data previously submitted to the Court by Liberty National).

Mr. Samford regarded the CPEP as a "major product change" for Liberty National (John Samford Dep., p. 30). Not unexpectedly, Mr. Samford testified that he believed the CPEP (including the difference between the benefits provided in the old and the new policies) was discussed with the Torchmark Board of Directors at or about the time that the new policy was offered in August of 1986. (John Samford Dep., pp. 37-39).

Indeed, the CPEP was so significant in the life of Liberty National that John Samford, himself, the President and CEO, was directly involved from time to time in the training and marketing plans that were developed in connection with the issuance of the new policy and the

plan to have existing policyholders exchange their old policy for the new one (John Samford Dep., pp. 30-31). Moreover, all departments of Liberty National, including marketing, legal and others, became involved in the development of detailed plans regarding the development of this new product and its introduction to the market place. (John Samford Dep., pp. 24-25). Mr. Samford, himself, authorized the development and approval of the new policy and had studied it in some detail; he knew that the new policy placed limits on benefits for radiation and chemotherapy that did not exist under the old policy (John Samford Dep., pp. 26-27). Indeed, as indicated above, he believed it so significant that it was reported to the Torchmark Board of Directors in some detail (John Samford Dep., pp. 37-39). Even information regarding the loss ratios under the old cancer policies, which, as indicated elsewhere herein, were the moving force behind the development of the cancer exchange program, was available to the Torchmark Board of Directors (John Samford Dep., pp. 23-24).

It is apparent that little, if anything, was done in connection with this massive CPEP to insure that misrepresentations and fraudulent practices did not pervade the entire program. Little or nothing was done despite the fact that this was, by definition, an exchange program where some 400,000 existing policyholders, then having policies that provided unlimited benefits for radiation and chemotherapy, were going to be approached by insurance agents that would inevitably be making comparisons from one policy to the other (the old to the new). It is in the comparison of two different policies that lay people (policyholders) are perhaps most susceptible to

misrepresentations and incomplete and inaccurate comparisons. In understanding comparisons of two policies, they are at the mercy of the insurance agents who are much more knowledgeable than they. Yet when John Samford was asked what he did to insure that the old policyholders understood the changes before being switched, he said simply that he relied upon the departments under him to insure this; when asked what he did to insure that those departments under him performed this function properly, his response was that he could not recall doing anything in this regard. (John Samford Dep., pp. 44-45).

This evidence clearly demonstrates that the board of Torchmark was directly involved in the policy exchange program at least in a direct supervisory capacity and the board of Torchmark directly participated in the fraud visited on the policyholders or, in the alternative, were negligent in their supervision of the Liberty National personnel.

C. By voluntarily undertaking an investigation of the cancer policy exchange program, Torchmark assumed a duty to investigate with due care and, therefore, is liable based on its negligent failure to conduct a reasonable investigation.

Alabama law is clear that "[o]ne who volunteers to act, though under no duty to do so, is thereafter charged with the duty of acting with due care and is liable for negligence in connection therewith." *Parker v. Thyssen Mining Const., Inc.*, 428 So. 2d 615, 618 (Ala. 1983). The existence of a voluntarily assumed duty "is a matter for

determination in light of all the facts and circumstances." *Chandler v. Hospital Authority of the City of Huntsville*, 548 So. 2d 1384, 1387 (Ala. 1989). Discovery to date demonstrates that Torchmark assumed a duty, beyond which it had a responsibility to provide as a shareholder, when an officer and member of its board voluntarily undertook an investigation of the cancer policy exchange program.

In March, 1990, Mr. Bob Stewart, former CEO of Liberty National and member of the Board of Torchmark, mailed a letter to Mr. Upchurch expressing concern that a comparison chart used by a Liberty National District Office was an attempt to confuse policyholders into switching out of the old unlimited policy. (Upchurch Dep., p. 28). Although Mr. Stewart was fully aware that Liberty National had its own general counsel and legal department, Mr. Stewart chose to mail the letter to Mr. Upchurch as general counsel for Torchmark. (Upchurch Dep., p. 36). Mr. Upchurch never personally checked to see if the comparison chart was inaccurate, and in fact never reviewed the comparison chart which Mr. Stewart alleged was inaccurate. (Upchurch Dep., p. 29). Mr. Stewart's letter informed Mr. Upchurch that there were intentional fraudulent actions being undertaken by Liberty National agents and Mr. Upchurch was aware this could result in serious potential liability to Liberty National. (Upchurch Dep., pp. 31-32).

Specifically, Mr. Upchurch can only recall contacting Mr. Bill Barcliff, general counsel of Liberty National, and discussing Mr. Stewart's statements. (Upchurch Dep., p. 32). Mr. Barcliff reported to Mr. Upchurch that the comparison chart had been generated in a district office and was not authorized or approved by the home office, and,

according to Mr. Barcliff, the chart was not widely used. (Upchurch Dep., p. 32). Based on his conversations with Mr. Barcliff, Mr. Upchurch determined that Mr. Stewart's allegations were meritless. (Upchurch Dep., p. 34). After concluding that the allegations were meritless, Mr. Upchurch directed the district office to discontinue using the comparison chart, and closed the matter. (Upchurch Dep., p. 33).

Mr. Upchurch reported Mr. Stewart's allegations to Mr. Ritchie and Mr. Rotenstreich and informed them of the steps he had taken. (Upchurch Dep., pp. 37-39). Furthermore, Mr. Upchurch reported Mr. Stewart's letter and allegations to Torchmark's Board of Directors. (Upchurch Dep., p. 40). Mr. Upchurch states that he made the Board of Directors aware of Mr. Stewart's allegations no earlier than the filing of the amended complaint in the *Robertson* action. (Upchurch Dep., p. 40).

Mr. Hudson, President and CEO of Liberty National, as well as an officer and board member of Torchmark, learned of the Mr. Stewart's complaint in 1990 (Hudson Dep., p. 40). However, as an officer and board member of Torchmark, he did not even bother to obtain and review copies of the correspondence from Mr. Stewart to Torchmark's general counsel, wherein Mr. Stewart expressed concern that there might be massive fraud occurring in connection with the CPEP (Hudson Dep., p. 40; Stewart trial transcript and exhibits). Moreover, Mr. Hudson did nothing in response to the concerns expressed by Mr. Stewart, a past president of Liberty National (Hudson Dep., p. 40).

Yetta Samford testified that in approximately 1990 the Torchmark Board was made aware of the filing of lawsuits against Liberty National and Torchmark involving the cancer exchange program. (Y. Samford Dep., p. 20). Yetta Samford recalled that Sam Upchurch, general counsel of Torchmark, explained the nature of the lawsuits to the Torchmark Board. (*Id.*)

Torchmark's status as Liberty National's parent corporation does not abrogate its responsibility in this matter. A recent Alabama Supreme Court decision makes clear that a parent corporation can be held accountable if it voluntarily undertakes a duty in connection with its subsidiary's business. In *Proctor & Gamble Co. v. Staples*, 551 So. 2d 949 (Ala. 1989), Proctor & Gamble, the sole shareholder in Plaintiff's decedent's employer, conducted inspections of the employer's (subsidiary's) premises. The court determined that Proctor & Gamble "undertook to identify and eliminate safety hazards, [but] . . . failed to comply with [the set guidelines] during the inspection one month prior to the death of the Plaintiff's decedent." *Id.* at 955. The opinion held that "there was evidence that the inspections were negligently performed" by the parent corporation and "that the negligent inspection claim was properly submitted to the jury." *Id.* at 951.

Like Proctor & Gamble, Torchmark voluntarily undertook a duty in connection with its subsidiary's business (i.e. to investigate an accusation of fraud). Also, like Proctor & Gamble, Torchmark negligently performed its duty. When Torchmark undertook to investigate complaints concerning the CPEP, it had a duty to conduct the investigation reasonably much like Proctor & Gamble had

a duty to comply with its guidelines in conducting its inspection.

A second applicable case, *Miller v. Bristol Myers Co.*, 485 N.W.2d 31 (Wis. 1992), analyzes the parent-subsidiary relationship in light of the "good samaritan" rule found in Restatement (Second) Torts § 324A (1965). It should be noted that § 324A states the law of Alabama. *King v. National Spa and Pool Inst., Inc.*, 570 So. 2d 612, 614 (Ala. 1990). Section 324A reads as follows:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if (a) his failure to exercise reasonable care increases the risk of such harm, or (b) he has undertaken to perform a duty owed by the other to the third person, or (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

Miller holds that a "parent corporation assumes a duty of care to employees of its subsidiary where it is found that parent corporation (1) undertook to render services, (2) to the subsidiary, (3) which the parent corporation should have recognized were necessary for the protection of the subsidiary's employees." *Id.* at 40. Based on § 324A, the *Miller* court set forth the test for parent corporation liability in this area as follows:

[t]he parent corporation is liable to its subsidiary's employee if the parent corporation failed

to exercise reasonable care to perform its undertaking and, (a) the parent corporation's failure to exercise reasonable care increased the risk of harm to the employee and such increase was a cause of the employee's injuries, (b) the parent corporation failed to exercise reasonable care in performing the assumed duty and such unreasonable performance was a cause of the employee's injuries, or (c) the subsidiary or the employee relied upon the parent corporation's undertaking such that they lessened, omitted, neglected, or otherwise altered their safety related practices and such alteration was a cause of the employee's injuries.

Id. A parent corporation's voluntarily assumed duties can run to the "consumers" of the subsidiary as well as the employees. *See Blumberg, The Law of Corporate Groups* § 14.05.1 (1987). Here, the parent corporation, Torchmark, voluntarily assumed a duty in regard to the investigation of Mr. Stewart's complaint. Torchmark knew or should have known that a thorough investigation was necessary for the protection of the affected policyholders; therefore, Torchmark had a duty to perform the investigation with reasonable care. *See Proctor & Gamble Co. v. Staples*, 551 So. 2d at 949. The evidence to date is sufficient to establish Torchmark's exposure to liability directly based upon its failure to properly investigate Mr. Stewart's complaint.

D. Torchmark's assets are relevant to consideration of the fairness of any proposed settlement.

The evidence available to date highlights the importance of considering Torchmark's assets with respect to

any proposed settlement. Torchmark's insurance subsidiaries are required to file statutory financial statements with state regulatory agencies. These statements are prepared according to accounting principles which differ from generally accepted accounting principles (GAAP). (1992 Torchmark Annual Report, p. 34, a copy of which is attached hereto as Exhibit E). For the year ending December 31, 1992 the statutory shareholder's equity of the Torchmark Insurance subsidiaries was a little over 595 million dollars. By contrast, the GAAP shareholder's equity for the year ending December 31, 1992 of the Torchmark insurance subsidiaries was a little over 1.1 billion dollars. (*Id.*) For the year ending December 31, 1992 Liberty National's statutory shareholder's equity was 326 million dollars. (*Liberty National 1993 Annual Statement*, a copy of which is attached hereto as Exhibit F). Assuming the same approximate two to one ratio between the statutory shareholder's [sic] equity of the Torchmark subsidiaries to the GAAP shareholder's equity of the Torchmark subsidiaries, the GAAP shareholders equity of Liberty National would be in excess of 650 million dollars.

In addition, each individual director of Torchmark (and they bear responsibility individually) has the assets of Torchmark available to him with which to satisfy any judgment that may be rendered against an individual board member. The Corporation is obliged to indemnify every director and officer of the company. (See Board of Directors Manual, Exhibit T2).

CONCLUSION

Torchmark so controlled the activities of Liberty National that the two corporations should be regarded as one and the same. Moreover, Torchmark itself has direct liability for the CPEP based upon its supervision of the Liberty National officers and employees, its knowledge of the CPEP and its failure to set up any policy or procedure to serve as a check against a fraudulent scheme in the course of the policy exchanges. Torchmark certainly is responsible for its own negligent conduct in this regard.

Torchmark is also responsible for its negligent failure to investigate after receiving notice of an allegation of massive fraud in connection with the CPEP. To this date, there is no evidence that Torchmark has taken any action to stop the fraudulent exchange of cancer policies. Moreover, only limited discovery has been conducted against Torchmark to date and further discovery possibly could reveal other theories, such as agency, upon which Torchmark has exposure to liability in regard to the CPEP. The bottom line is that Torchmark is exposed to liability in connection with the CPEP and should not be released without appropriate payment by it.

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by mailing the same by United States mail properly
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/s/ M. Kathleen Miller

* * *

[p. 847] I'll see you tomorrow.

MS. MILLER: This won't take but one second.

THE COURT: That is one second too long. I'll see y'all in the morning.

(THEREUPON, court stood adjourned at the hour of 4:40 p.m.)

MORNING SESSION - THURSDAY,
MAY 19, 1994 - 9:00 A.M.

WHEREUPON, the following proceedings were had and entered of record as follows, to-wit:

MR. ROEDDER: The first thing is the basic set of objections - It is paragraph number one, Judge that we filed as objectors to the fairness of the settlement and the certification of the class. We listed, in accordance with your Honor's earlier orders on October 8th, all our objections to the proceedings, and that is what number one is. I don't think there is anything further to be submitted in support of it. It is just for your Honor to rule upon.

MR. PENNINGTON: And, your Honor, for the record, we oppose the motion, and I apologize to the court but I haven't received a service copy of this yet. I didn't know I would be involved.

THE COURT: Okay. If I grant that motion the whole case is gone? Is that what it means?

MR. PENNINGTON: That is what it amounts to.

[p. 848] THE COURT: Let me go ahead and deny that one.

MR. ROEDDER: Number two is after we had our hearing in January Mike filed a rebuttal - what we call a rebuttal affidavit of Mr. McWhorter, their actuary, and our position is that that affidavit ought to be struck. Our position is that affidavit comes too late. We didn't have a chance to cross-examine him about the matters that are raised in the affidavit, it is ~~hearsay~~, the matters that are in the affidavit are speculative and conjectural. We have listed all our objections in the pleadings that we filed.

THE COURT: The affidavit he filed subsequent to the Fairness Hearing?

MR. ROEDDER: Yes, sir.

MR. PENNINGTON: Your Honor, if you remember, you gave everybody an opportunity to submit objections up until I think it was the Wednesday after the Fairness Hearing, and they filed affidavits on their side, we filed a rebuttal affidavit on our side, and certain things that had been said at the Fairness Hearing. And our position is what is good for the goose is good for the gander. If they were entitled to file affidavits up through Wednesday so were we.

THE COURT: Well, certainly.

MR. ROEDDER: I don't remember - and, I may [p. 849] just not remember correctly, but I don't remember Liberty having permission to file an affidavit on behalf of Mr. McWhorter. He was here for trial, and -

THE COURT: Well, certainly - I certainly didn't grant specific permission, but I think if one side could file affidavits the other side certainly could.

MR. ROEDDER: Did we file? Did we file affidavits after the January hearing? I know we filed some things that came up in the course of the hearing, but I don't think we filed any affidavits, and I don't think we asked for permission, but the record will speak for itself on that.

THE COURT: We will just let the record show that. If both sides filed affidavits, all of them are admitted. If one side filed them then the motion to strike them is granted. How about that?

MR. ROEDDER: All right, sir. Number 3 -

THE COURT: You've got a - who is Moyse? Is that your-all's man?

MR. ROEDDER: Yes, sir.

THE COURT: You filed that affidavit with Betty Ann Eckels. Who is that?

MR. PENNINGTON: That is an objector, your Honor.

THE COURT: That is an affidavit that was filed [p. 850] subsequent. So, submission of seven affidavits in opposition to Defendant's Motion to Strike Late Objections, whatever that is.

MR. ROEDDER: Judge, I may be wrong, because I, frankly, don't recall specifically right now, and I don't want to misstate anything, but I think the things

we filed after the hearing were specifically, you know, allowed by your Honor without any kind of a blanket filing; but, I think we had permission to file exactly what we did file, nothing more and nothing less. But I, frankly, don't recall, and I haven't looked back at the record.

MR. WILSON: I really think because of the length of the hearing that you let everybody have the right to supplement to cut down on the necessity of calling additional witnesses, and things of that type. But, I thought it was a blanket -.

MR. PENNINGTON: I did too.

THE COURT: Well, you know, I let them file everything, but this would be different because he did testify. I told them to submit affidavits of objectors rather than put the objectors on the stand.

MR. PENNINGTON: This affidavit, your Honor, addressed certain questions that I think you wanted to address at the hearing, that that was the purpose of it. It was contemplated at the hearing that there needed to be [p. 851] some testimony on these things. I think it came up at the hearing. That is why we filed that affidavit; but, as you see, they filed a whole host of stuff.

THE COURT: I made the ruling. I think it is the same - if one person filed an affidavit, then everybody has a right to.

MR. PENNINGTON: Then that motion will be overruled because you already pointed out there were affidavits filed by the objectors on that same day?

MR. GEWIN: By class counsel.

MR. PENNINGTON: Class counsel, and the objectors filed affidavits that day and so did we.

THE COURT: You filed some on February 7, didn't you? Notice of filing affidavits shows on -

MR. ROEDDER: (Interposing) Yes, sir, but, again, my recollection may be wrong, but I think whatever we filed we had express permission to file.

THE COURT: Well, the record will show that, if it makes any difference.

MR. PENNINGTON: Well, your Honor, my only concern is we had a lot of conversations off the record about that sort of stuff too, and I just think that, you know, you can give it whatever weight it is entitled to.

THE COURT: Well, it is in the file. I'm not going to take it out of the file.

[p. 852] MR. PENNINGTON: Thank you, your Honor.

MR. ROEDDER: I'm not sure where we are on number two, then. At any rate, it is there for your Honor to do with whatever your Honor wishes.

THE COURT: Okay.

MR. ROEDDER: Number 3, your Honor asked us at the hearing to file objections to the documentary evidence, as you recall, that came in or that was submitted after the hearing. And we filed on January 26th objections in the form of a letter to your Honor where we objected to various materials that had been submitted by

Liberty National. Again, I don't think this needs reargument, and I think the letter is self-explanatory.

THE COURT: Okay.

MR. ROEDDER: It is January 16, 1994. It is just something that your Honor needs to look at and rule as you will.

THE COURT: All right.

MR. ROEDDER: Paragraph number 4, in the motion that we are looking at -

MR. PENNINGTON: For the record, your Honor, we submit that Item Number 3 should be overruled to. Our position all along was the best thing for the court to do was take all the evidence offered and give it whatever weight it was entitled to rather than taking and choosing.

[p. 853] MR. ROEDDER: We think certain evidence was admissible, but it is for your Honor to rule.

Number 4 is something that might need a little argument. We had a client, Ms. Walton, who was diagnosed with cancer, and we were advised of that in January after the hearing had occurred. Under the terms of the settlement as then proposed, she would not get anything like the other cancer victims would. She would not be treated equally with them because her diagnosis happened to come later than June 16th, 1993.

THE COURT: Didn't we talk about that at the time you filed -

MR. PENNINGTON: (Interposing) Your Honor that was mooted by the February 4th order, which I think

took reformation back to June 16th, which means if this settlement is approved and affirmed she gets the reformed coverage. Now, what he is saying, she doesn't get to share in the monetary pools, and that is right; but, we have got to have a cutoff sometime. We are going to have the same situation to crop up if this case is appealed. It is going to happen to them too. You have got to have a cutoff date.

MR. ROEDDER: Not only does she not get to share in the monetary pools, both of them, she does not get restitution either; so, these claims that are being submitted while this thing is pending on appeal or [p. 854] whatever, will be paid, presumably, under her current policy, the new policy that is supposed to be better.

MR. PENNINGTON: As reformed.

MR. ROEDDER: I understand the reformed policy won't be effective as of June 16th, 1993, maybe I misunderstood. I understood that payments were not going to be made under that until everything was done on appeal.

MR. PENNINGTON: I think that is right.

MR. ROEDDER: Okay. So, until a year or two or three from now when this thing is done on appeal, she is going to be submitting claims that will paid only in part because the new policy doesn't pay -

THE COURT: Who is going to appeal it? Y'all going to appeal it?

MR. PENNINGTON: No, huh-uh.

THE COURT: Y'all going to appeal it, Bill? If you're going to appeal it -

MR. ROEDDER: I'm saying she is in an unavoidable position of not being entitled to the same thing the other cancer patients get.

THE COURT: Well, you know, there has got to be a cutoff sometime. You know, you can't keep letting it go.

MR. ROEDDER: Anyway, that is number 4. I guess that is denied?

THE COURT: Yes, I think so.

[p. 855] MR. ROEDDER: All right. Number five, we have moved to strike again. This was a supplemental affidavit. It is similar to the one by Mr. McWhorter that what he talked about under paragraph number two that was submitted after the fact. And, again, we filed objections to that on January 27th, 1994. Those are there for your Honor to rule on. I'm assuming you would do as you did on number 2?

THE COURT: I'm going to look at those again and go back and see what we did and try to remember what we did, look at my notes and see.

MR. ROEDDER: And number one, those objections are just to clean up, those are overruled, right, the basic objections to the certifications?

THE COURT: Yes.

MR. ROEDDER: All right, sir. Number five that we have just talked about, that is under consideration.

Number six, Liberty National filed after the hearing a motion to recharacterize the class so it could be certified on a separate independent basis that was not the subject of any discovery for any trial evidence. And we object to their moving after the fact to recharacterize what they want in the way of a class action.

MR. PENNINGTON: Your Honor, that would be the B-one business, the whole Fairness Hearing was about B-one and limited funds, and your order of February 4 has already [p. 856] overruled that motion explicitly.

THE COURT: All right.

MR. ROEDDER: I want to make clear, and I understand your Honor is denying February 6 -

THE COURT: (Interposing) Yes, I'll deny it.

MR. ROEDDER: That was not an issue at trial. It is our position that the issues raised by this pleading filed after the fact were not issues that were tried or discovered. That is our position, and I know Mike disagrees, your Honor, -

MR. PENNINGTON: (Interposing) My position is that the issue certainly was raised, and, if nothing else, our motion was to conform to the evidence actually presented at the Fairness Hearing.

MR. ROEDDER: We disagree to all that. Number 6 is denied?

THE COURT: Right.

MR. ROEDDER: Number 7. This one may need a little discussion. We filed a motion asking that certain

claims not been considered within the class, and if your Honor wants us to just file suits and have a court in some other place to decide whether they are or not, that is fine; but, basically, what we are dealing with here, is what is called Liberty National supplemental policy. It does not have any benefits that are at issue in this case. [p. 857] It doesn't have chemotherapy, it doesn't have radiation, it doesn't have prescription drugs, it is not that kind of a cancer policy, it is a different kind of cancer policy.

That cancer policy - a supplemental policy provides, and the basic underlying policy that the supplement provides, is that Liberty won't pay except under one. And, so, they are taking the premiums for two policies, one being the supplemental policy. It doesn't have anything to do with these cancer claims. They are charging a premium for that when they are also selling at the same time another policy basic cancer policy that says they won't pay under both, they will only pay under one. We think that is a separate independent fraud involving a separate different policy. It is a cancer policy, but it doesn't have anything to do with chemo- or radiation. We have got clients that suffered that kind of -

THE COURT: (Interposing) Nothing to do with the switching?

MR. PENNINGTON: It does have everything to do with the switching. What happened is that there was an old - a number of different old policies. This supplement did not have radiation and chemo- in it, but it increased the daily benefits for hospitalization by a few dollars here and there, and gave expenses in those categories. Some [p. 858] people with old policies had an old

policy and a cancer supplement. When the switch occurred some people kept that supplement and some people didn't.

This argument that they are not going to get benefits under both if they kept it is crazy, because there has never been anybody denied benefits under the cancer supplement policy on that basis, but this is part and parcel of the switch. Most of these claims that they have filed, and the objections they have filed are to say, "I was fraudulently induced at the time of my switch not only to switch to the new policy but also to drop my cancer supplement. It is part of the same transaction. It is involved in the exchange, it is part of an exchange, and it is covered by the release in the settlement. And this settlement is a very broad settlement. It provides a lot of relief to the class. And, for us to have to provide relief to everybody in this case and then still be subject to punitive damages claims or any other claims from somebody who is going to hold their mouth a little bit different, and call it a different claim, is just not right. That is not what the settlement is about, and I think the release ought to be enforced the way it is. You have an injunction in place against filing lawsuits in separate courts. A permanent injunction is part of the relief, and I don't think it is right to ask them to file [p. 859] their suits in separate courts and let another judge decide in light of your injunction. I think the right way to do it is to come to you with an evidentiary record and let you rule if it is covered by the injunction.

THE COURT: In other words, you don't want me to rule the rest of my judicial life?

MR. PENNINGTON: No. I think there are too many variations of this, and I think if you overrule this objection you have ruled.

MR. ROEDDER: Very briefly in response.

This doesn't have anything to do to be real clear, it doesn't have anything to do with whether somebody got switched or not. It really doesn't. If somebody was sold a supplement policy on top of any other cancer policy that Liberty issued without ever getting switched from anything to anything, they only got coverage under one of those two. They had to take their choice. Nobody has ever been denied that. This policy says, "If a covered person" – and this is the basic policy that you might have a supplement to – "If a covered person is also under another cancer policy issued by us," and that would be the supplemental policy, "only one policy chosen by you will be effective." I mean, I don't know whether they have ever tried to enforce that or not.

THE COURT: In other words, we are arguing [p. 860] something that we don't have a case about?

MR. ROEDDER: No, sir. I have clients who have been sold a useless policy. They bought a supplement policy – a number of clients have been sold a useless policy. It doesn't have anything to do with whether they have switched, and I want to pursue those fraud claims for selling my folks a useless policy and charging them premiums when they knew full well only one policy would pay and they sold them two.

MR. WILSON: Judge, if what Bill says is correct, I don't think it would be covered by the release. If what Mike says is correct, I think it is hearsay.

THE COURT: Well, you show me an order that says that.

MR. WILSON: That is the question on the table. How is it going to be determined in the future? If I'm hearing Bill, he is saying that these people had a fraud claim even if there had never been a cancer exchange program, because he is saying they already had a supplemental policy and a cancer policy before the idea of an exchange program ever came about. If that is the case, that is, obviously, not to be covered by this.

THE COURT: What is fraud?

MR. ROEDDER: The fraud is selling a person two policies and charging them separate premiums when they [p. 861] know full well only one policy will pay.

THE COURT: If it is in the language of the policy don't they have to tell them it will pay before you have a fraud?

MR. ROEDDER: No, sir, I don't think so. I think if they come in and they do not disclose -

THE COURT: In addition to the written policy?

MR. ROEDDER: Yes, sir.

THE COURT: They just have to come up and tell you, "Now, this ain't going to be paid"?

MR. ROEDDER: Well, that is getting to the merits of the fraud case. Not whether I can file it or not; but, yes, sir, that is what I believe.

MR. PENNINGTON: Your Honor, the cancer supplement policy is not the same thing as a cancer policy. We say you can have two cancer policies at the time same, we don't say you can't have a cancer policy and cancer supplement policy. That is the difference. He is trying to say a cancer policy supplement policy is the same thing as a cancer policy. He is arguing the merits of the -

MR. ROEDDER: (Interposing) It is not.

MR. PENNINGTON: I just want the record to be clear we have never denied benefits under a cancer supplement policy on the grounds that a person with a cancer policy and a cancer supplement policy had two cancer [p. 862] policies.

MR. GEWIN: Never. Never.

THE COURT: Y'all are saying that the cancer policy and the cancer supplement policy are different policies, but the language in there means a cancer policy or a cancer supplement policy is not a policy under the terms of -

MR. PENNINGTON: (Interposing) That is exactly right.

MR. GEWIN: And there was discovery on that question in this case.

MR. ROEDDER: Let them tell that to a jury. Let me pursue my own fraud claim that doesn't have anything to do with a switch and see what the jury does.

MR. WILSON: It sounds to me like it might be the subject of summary judgment; but, if the guy had a claim before the cancer switch was ever conceived, I don't see how that can be released by this settlement.

MR. ROEDDER: Or after the cancer policy. It doesn't have anything to do with the switch, if he just had two policies. My claims here don't have anything to do with switching. It is just selling two policies when only one would pay.

MR. PENNINGTON: I want to make one more point about this just to be real careful. They are trying to [p. 863] walk a lot of things through any crack they can, and there are a lot of other people making these same kind of motions with the claim, "Look, when my exchange occurred I lapsed my cancer supplement policy, my agent induced me to do that, that was a fraud too," and they want that supposed fraud that occurred exactly in the same transaction as the exchange - as part of the exchange to be accepted too.

THE COURT: Well, the whole thing is, the release is for everything that was involved in the cancer switch policy.

MR. PENNINGTON: That is right.

THE COURT: If it wasn't involved in it, it is out of it; if it wasn't involved in it, it is in there.

MR. ROEDDER: May I take it that your Honor would grant this particular motion insofar as it does not relate to an underlying cancer switch?

THE COURT: As long as it does not relate to the cancer switch, certainly. That is the only thing that is the subject of the lawsuit.

MR. PENNINGTON: Well, your Honor, there are a couple of other categories of the release, just to make sure the record is clear, and it doesn't apply to this, but we do have in the release the failure to offer somebody with an old policy an opportunity to exchange. That claim is released, and any transaction that results in the [p. 864] issuance of a new policy to somebody with an old policy, that is released. And that is there so you can't say, "Well, this wasn't" -

THE COURT: (Interposing) Well, if it is in there it is in there. If it is not in there, it isn't there. If it doesn't have anything to do with the switch, then, you know, we will have to deal with that on an individual basis regardless of whether I deal with it or somebody else deals with it. Right?

MR. PENNINGTON: That is right.

MR. ROEDDER: All right, sir.

I'll move on to paragraph 8. I think we have got a ruling on paragraph 7. It is my understanding that the relief that I sought in that particular paragraph is granted to the extent that my fraud claims that I want to assert do not rest on a switch from one cancer policy to another.

MR. PENNINGTON: I object to the way he characterized it, because -

THE COURT: (Interposing) If it has nothing to do with the cancer exchange policy or the cancer exchange, then it is not in the settlement. If it is it is out, you know. We will have to take each individual case on each individual fact to see, I guess. That is the only way I know to determine that.

[p. 865] MR. ROEDDER: All right, sir. I'll move on to paragraph 8.

THE COURT: All right.

MR. ROEDDER: I don't think this one needs any additional argument. It is basically where we had come in after the initial settlement in June, and after your Honor had issued an injunction, and we filed objections to the certification of the classes, and the issuance of the injunction without hearing various other matters. And, that is a matter to be ruled upon by your Honor.

MR. PENNINGTON: That has been implicitly overruled by your Honor already.

MR. ROEDDER: So that motion is denied?

THE COURT: Yes.

MR. ROEDDER: All right. In paragraph 9, it goes back - again, this is more of a clean-up matter. It goes back to the original motion to intervene that we filed in the intervention petition, and the amendments of those petitions were - again, we object to the certification and the settlement, lack of discovery, those things that we have been fussing about throughout, and I'm assuming that matter has been denied too?

THE COURT: Yeah.

MR. ROEDDER: Number 10, is our - again, I don't think this needs much argument, but we filed [p. 866] objections to the notice that Liberty National sent out on a whole bunch of grounds.

THE COURT: Well, that was taken up in the hearing too wasn't it?

MR. ROEDDER: Yes, sir.

THE COURT: That will be covered in my order. There was an order on the Fairness Hearing

MR. ROEDDER: All right, sir. Well, if the notice is going to stand, this paragraph 10 will be denied. If your Honor wants to wait to rule on that, then -

THE COURT: (Interposing) I'm going to rule on that in the order because that is all part of it.

MR. ROEDDER: I'll mark 10 is under consideration and will be known later.

Number 11, we have - again, this is another clean-up matter. We had objected to the protective order that was issued with regard to the documents that Liberty produced. I think, your Honor probably has, at least, implicitly maybe overruled those, but I assume those objections are overruled?

THE COURT: Yes, sir.

MR. ROEDDER: Number 12 is an objection to some of the testimony at trial. Mr. Moyse testified as their expert regarding the fairness of the proposed settlement. We objected at the time. We didn't think he was qualified [p. 867] to so testify. It went to the ultimate issue. We

asserted a number of grounds for our objections at that time, and we reassert those now.

THE COURT: Well, you had a ruling on them at the time didn't you?

MR. ROEDDER: No, sir. I think your Honor wanted us to wait and rule on everything after the matter was heard and all our objections were submitted; so, I think technically it is awaiting ruling now.

THE COURT: Okay. Denied.

MR. ROEDDER: And the objection is overruled.

Number 13 is something - I don't know if you want to take that up right now. It has to do with class counsel's motion to modify the court's order, and there were two things, as I recall, that Frank and Jere wanted. One was to tighten up the release language in the settlement -

THE COURT: (Interposing) Well, we will let Frank and Jere argue their motions.

MR. ROEDDER: We filed an identical motion.

THE COURT: Okay.

MR. ROEDDER: And we also want that.

And, to the very same extent, no more no less, what they want, and, also, they wanted I think to release - not to release Torchmark, and we want Torchmark [p. 868] not to be released; but, that's what we have been doing discovery on. I think your Honor, maybe, wants to hear on that, but we have submitted briefs and we are prepared to argue 13 and 14. One is class counsel's motion and one is ours.

THE COURT: Okay. That is the motion that the main part of it is not to release Torchmark? Is that what it's talking about?

MR. ROEDDER: That's right. You want us to hold up on that?

THE COURT: Just hold up on that.

MR. ROEDDER: All right, sir. Number 15 is another objection to a protective order that we filed when Torchmark produced documents. That is the same sort of thing. I assume that is overruled as well?

THE COURT: Yes.

MR. ROEDDER: All right, sir. I think that concludes everything that I have, and I think with each paragraph we have now got a definitive answer, either it is overruled, denied, or under consideration. And I appreciate your Honor's patience with me.

THE COURT: Okay.

MR. WALDROP: Your Honor, we have filed a motion that was in regard to two specific cases, this one is Gussy Johnson and Swillies [sic].

[p. 869] Your Honor, we had filed this and attached a copy of a proposed complaint. What this deals with, both the Swillies and the Johnsons had been sold - the best way I know is to show your Honor, they are a family, and they have been sold a cancer policy, and they had also been sold a single parent cancer policy. Our position in both of these two situations are that what they should have been sold was a one-family policy, not an individual cancer policy in a single-parent cancer policy, because

when you put these together, obviously, the premiums are greater than a family policy. The purpose of the agent doing this, we believe, was simply to make more of a commission. And that is what our lawsuit - we want filed on behalf of both of them. Now, it gets more complicated, but in no way - the reason we attached the copy of the complaint, your Honor, we are not claiming that the old policy is better than the new policy or the new policy is better than the old policy, we are just simply saying in these two situations, is that the agent and the company was cheating the family because they ended up selling them a single-parent policy in an individual policy as opposed to a one-family policy. So, it doesn't have anything to do with whether radiation benefits and drugs outside the hospital -

THE COURT: (Interposing) The switch, okay. It [p. 870] has nothing to do with the switch -

MR. WALDROP: Yes. We are not making any claims. So, what I say then it dovetails into the situation that Bill Roedder just brought up about the release. And the reason I presented this to your Honor this way, because I didn't want to just haul off down to Mobile and file a lawsuit down in Mobile and somebody make a contention that Kathy and Norman filed this suit down there and somehow it infringed upon the injunction. I didn't want to do that. But, I don't believe this is what anybody intended this case to be about. In other words, this is a separate fraud.

MR. PENNINGTON: Your Honor, I have served yesterday by fax on Ms. Miller a copy of the affidavit that I intend to file with the clerk setting this out today, but

basically what the situation is, is this with Gussy and Willie Johnson:

Husband and wife have an old family policy, husband and wife switched to a new family policy; wife gets cancer. In 1990 there is another exchange to the new 1990 policy; wife is not eligible to exchange to the 1990 policy because she has had cancer.

THE COURT: So, they were switched to a new policy and when she got cancer they switched them again?

MR. PENNINGTON: Right. And that is - because [p. 871] she was not eligible they wound up with two policies. That is exactly what happened. That is - their records - I talked to them all week about this, that is what my records show.

THE COURT: All right.

MR. PENNINGTON: And, it is clear that -

THE COURT: If what you are saying is right it is in, you can't file suit; if what you say is right, it is out and you can file suit. How am I going to know which one is right?

MR. PENNINGTON: I think the records are clear. I don't think they are going to dispute what I just said. If they are, they are going to have a hard time showing it, because the records are absolutely clear they were issued those policies. The records are absolutely clear when she got cancer and the records are absolutely clear after she had cancer that is when they wound up with the individual policy.

THE COURT: If it is as clear as you say it is my ruling is going to be clear as a bell, you can't file it. The injunction covers it.

MS. MILLER: Your Honor, the problem is, and the Johnsons will testify that -

THE COURT: (Interposing) Every time Frank gets up he wants to tell me I'm wrong. If I'm right he'll [p. 872] sit down.

MR. WILSON: No, I was going to say that the question on the table is who is going to decide that, because, I feel as class counsel that the description of the claim that Norman has given would clearly not be intended to be -

THE COURT: (Interposing) No question about that.

MR. WILSON: By the same token, if it all arose as a part of that switch there is no doubt it is intended to be covered by the release.

THE COURT: That is what I say.

MR. WILSON: That is why I'm saying to the court I think the question on the table is, and this is something that Norman has put before you today, but that issue is going to come up three years from now, and the tough question I think that is really on the table is who is that going to be who is going to decide when and how, where, who is right, and whether it is related.

MR. PENNINGTON: Your Honor, part of the settlement is your injunction, and that I think means that you or some combination of you and a special master will

have to decide that question. And, I don't know any other way -

THE COURT: (Interposing) How am I going to [p. 873] decide it if I don't have anything other than just what y'all say?

MR. PENNINGTON: I think the right way for them to handle it is for them to file a petition with whatever affidavits they want to file, and we get a chance to respond to it, and you make your ruling on that basis. We all have an opportunity to be heard and take our appeal rights.

THE COURT: I don't know any other way to do it unless you - they file the suit and they come up here and file a rule to show cause, we will just have to come back up here some day anyway.

MR. PENNINGTON: That's right.

MR. WALDROP: Your Honor, my only suggestion about that is, it does place a lawyer in a terrible situation. I mean, I clearly didn't think this was covered, but the more I searched I started worrying about it. That is why I was trying to do the right thing.

THE COURT: Well, the right thing is, if Mike is right, then you can't file it; if you are right, then you can file it. How am I going to decide who is right without you doing discovery?

MR. WALDROP: Well, are you saying that I should file my lawsuit here - up here in this county? I mean, I'm trying to -

[p. 874] THE COURT: (Interposing) Well, maybe you could file a petition with the court to determine whether or not it is covered under the release.

MR. WALDROP: Your Honor, I have filed a motion -

THE COURT: (Interposing) I understand that. It doesn't serve the same purpose, but I have got to decide it based on facts that develop. I can't decide it on the arguments of the lawyers.

MR. WALDROP: Yes, sir.

MR. WILSON: Well, if what Mike is sayin' is true, it ought to be able to be shown pretty easy, and not to difficult. So, let's use a hypothetical. Suppose the issue comes down to the client of Norman, say, one, two, and three - say white, and the client of Mike says black. Is your Honor going to decide a credibility issue to decide the question of whether or not they can file a lawsuit in the first place?

MR. WALDROP: See, my clients would testify, and the Johnsons would testify, in 1990 - they would say, "That agent came in and said, 'Look, you know you used to only have a single policy here.'" Well, he says in truth that is not true, they have also had a family policy. But, the agent said, "Well, you have always had a single policy, and you know you got cancer, so what we want to do now is [p. 875] so your husband will be covered and your child will be covered, let me sell you this single-parent policy." And they would say, "And if we didn't have coverage and you had cancer and you now can't get a family policy, I guess you're right." He said, "No,

you're right, that is what we have got to have in two policies." All three of the Johnsons - both of the Johnsons will testify to that. So, that is fraud, because the truth of the matter is they should have just had one family policy; but, that doesn't have anything to do with the relative values of the policy or anything else, they just get cheated out of a -

THE COURT: (Interposing) I understand what your argument is.

MR. WALDROP: Yes, sir.

THE COURT: Everybody can make that, but how am I going to decide that if you don't develop some testimony?

MR. PENNINGTON: Your Honor, I think the right way to handle it would be to enter your order on the class general, take these issues up once the appeal goes back on a case-by-case basis.

THE COURT: That is the only way I know to do it. If you have a better suggestion I sure would be willing to hear them.

MR. WILSON: I have one more point -

THE COURT: (Interposing) Y'all excuse me, [p. 876] I have a jury that wants to see me that has been out all night.

(Recess)

THE COURT: All right, we'll go on.

MR. WALDROP: I think in one thing we do have a basic disagreement. You know, just like in any

other case whether there is a release that is pled, most of the time, as far as I'm aware, if you file suit in Conecuh County and somebody thinks it is released, we will go to the trial judge in Conecuh County that looks at it and says -

THE COURT: (Interposing) There is no fraud as long as it is a relief, but if you are talking about the injunction, you have got some penalties if you do something that violates that injunction. That is the problem. If it was just a relief, then we wouldn't have any problem.

MR. PENNINGTON: Your Honor, all of these - first of all, it seems to me that virtually all these kinds of motions about I'm going to hold my mouth a little different and say it is not covered by the class, are mute if this case goes up on appeal and the matter is not affirmed. I certainly don't think that is going to happen, I don't think it is due to happen; but, it seems to me the right thing to do is just reserve ruling on those types of questions until after the appeal is over, because the [p. 877] appeal -

THE COURT: (Interposing) Or time for the appeal has run.

MR. PENNINGTON: Or until time for the appeal has run.

THE COURT: Because the statute - the statute of limitations is tolled, is that correct, until -

MR. WALDROP: (Interposing) As long as it is "stayed". There is a saving provision under the limitation action that says at the time the appeal is taken out, and I would assume, your Honor, that we would agree that

these presently would be covered by the injunction at the moment until your Honor make a decision, am I right?

THE COURT: Right. I don't want to cut off your rights to file suit just because the time is running while this is going on.

MR. WALDROP: Your Honor, just one aspect of this just so we could get one thing straight on the record. One of these involves the wife whose name is Linda Swillie, and I believe that Mike agrees with me that the injunction would not cover her.

MR. PENNINGTON: Linda Swillie had an old policy that did not have unlimited benefits for radiation and chemotherapy, and, therefore, she is not a class member.

[p. 878] MR. WALDROP: So, we would be able to file a lawsuit on behalf of her?

THE COURT: If she is not a member of the class, certainly.

MR. WALDROP: Okay. I just didn't want -. Okay.

Your Honor, the last thing in regards to this, now, would your Honor have to wait until after the end of the appeal to hear, like, for example, this?

MR. PENNINGTON: That is what we just talked about.

THE COURT: I sure hate to make rulings if I don't have something - on something that is going to be moot down the way anyway. I mean, I don't want to

make - I don't want to take up a lot of time ruling on stuff that doesn't make any difference down the road.

MR. PENNINGTON: Thank you, your Honor.

MR. WALDROP: Well, in other words, do I understand what your Honor will do at some point, since he filed an affidavit yesterday in regards to this, that at some point then you will set this, like, our motion down for a hearing?

THE COURT: What I would like to do is let's just go ahead now and see if we can't set a policy for this thing since it is going to [sic] done in the future.

[p. 879] MR. PENNINGTON: If the settlement is approved, and I don't know what you claim to do about that, but if the settlement is approved, if it is appealed or the time for appeal expires, I think the right thing to do is similar to what you have done today.

THE COURT: Well, it could be done in two ways: They could file a suit, y'all can plead the release in that court and file a contempt petition in this court against enjoining or against - for the injunction - violation of the injunction. All right.

MR. PENNINGTON: I suppose that is one way, your Honor.

THE COURT: That would be one way. The other way would be to come to this court first and ask for a declaratory judgment whether or not it is covered in the injunction.

MR. PENNINGTON: I think that is the only way to do it, your Honor, because otherwise we are going

to have that situation I sure don't want to be in again with two judges with possibly different interpretations -.

THE COURT: Well, the judge wherever the suit is filed is going to be limited to the release. He doesn't have anything to do with the injunction.

MR. PENNINGTON: I'll be in here saying, "Your Honor, this suit is enjoined," and you say, "Yes, it is [p. 880] enjoined," and, some judge in some other county may say, "I've interpreted the relief differently, it is not enjoined; the motions to stay is denied," and here we are in another round of mandamus proceedings up in the Alabama -

THE COURT: (Interposing) I don't know how I can stop them, do you?

MR. PENNINGTON: You can stop that by having the procedure come to this court, "file your petition, and if you don't agree with my ruling appeal."

MR. WILSON: You're going to have people that - these gentlemen are not going to, but you're going to have people that don't know the existence of this case, and three years from now or six months from now they file a lawsuit or whatever that don't know about this; but, that is going to happen from time to time, that people are going to file a suit.

THE COURT: That is right.

MR. WALDROP: And, also, you're going to have a situation where you're not going to be really - you know, you're pretty sure it is not covered. I mean, I can think of one or two that I have that I'm pretty sure it is not covered.

THE COURT: That is what we just talked about.

MR. WALDROP: I'm sure - well, you know what [p. 881] I'm saying. This one to me is not covered either until I started hearing how broad he was going to construe the release.

MR. GEWIN: Your Honor, that happens in injunctions all the time, and that is what the courts are for. And we really can't try all the attempts at cession or cession from this settlement or this hearing today. And, I think the only way to do it is, if I'm a lawyer and I know about it and I know about the injunction -

THE COURT: Tell the court -

MR. GEWIN: (Interposing) Judge, here is my petition, here is my evidence. I'm not covered.

THE COURT: I think that is the best course of action for it.

MR. WALDROP: Do I understand, then, on these you're going to set them down at some later date? I just want to make sure. I don't mean to respond to his affidavit that he just filed.

MR. PENNINGTON: I think I would agree with that. He need not respond.

MR. WALDROP: At some other time we will be given a chance to bring our clients up here or whatever we need to do?

THE COURT: We will take whatever discovery is submitted or whatever.

[p. 882] MR. WALDROP: All right.

THE COURT: I don't know any other way to do it.

MR. WALDROP: All right, sir. I was just trying to make sure that we were clear. Two other things just to make sure, I understood these were to be our motions. There was a motion that was filed about a Motion to Strike on the part of the late objectors. I think, your Honor, at the last hearing you said at some point you were going to consider that. Should we - you know, we have got - I didn't know whether you wanted us to maybe file some affidavits on behalf of them and your Honor take them under submission, I didn't know if that was going to be something that may be brought up -?

MR. PENNINGTON: I may be remembering something wrong, Judge, but I thought the ruling was that you were going - submitted objections up through February 20th, the date of the Fairness Hearing, but the cutoff proof of claim forms was still December -

MR. WALDROP: (Interposing) In other words, -

MR. PENNINGTON: That is what I remember.

MR. WALDROP: Okay. Well, as long as we don't have a problem. In other words, your Motion to Strike would be denied?

MR. PENNINGTON: I had understood he had ruled [p. 883] that way.

MR. WALDROP: I was just trying to make sure that I -

THE COURT: (Interposing) Anything filed up to the Fairness Hearing was going to be admitted.

MR. WALDROP: Okay. And, I guess that is the - I guess the last thing, we had filed the motions in regard to attorney's fees, but I guess that is something that your Honor will take up at a much later date.

MR. PENNINGTON: No, I don't think so, your Honor. I don't think - you're asking us to agree to modifications to the settlement put forth in the February 4th order, and I don't think class counsel can agree to those modifications if he is subject to a risk that Norman is going to take "X" dollars of the class's money like Norman has asked for.

MR. WILSON: I must have something.

THE COURT: Oh, boy! Let's talk about taking their money.

MR. WILSON: I heard money, Judge.

MR. PENNINGTON: I know I'm not going to be exposed to any risk to anybody being awarded attorney's fees and accept the settlement. I mean, we have got to have an end to this thing in terms of what the settlement is. And, they are petitioning for attorneys' fees on a [p. 884] common funds basis for a portion of the enhancement set forth in your February 4th order, and I don't see how you can take that up at a later date and not have Frank know what the class - whether the class is going to keep all that benefit or not. And, I know some others have filed petitions, and I have heard noises someone is going to ask me to pay -

THE COURT: (Interposing) I'm going to rule on all those in my order. I'll take any written arguments that you want to submit about attorney's fees, I don't want to

hear any oral argument, but I'll take any written arguments that are filed seven days from today.

MR. WALDROP: Would that mean if we would like to add any affidavits -

THE COURT: (Interposing) Whatever you want to put in.

MR. WALDROP: I just felt like I had to bring that up.

THE COURT: Sure.

MR. WALDROP: Thank you, your Honor.

MR. ROEDDER: Judge, I'm sorry, but I forgot two matters that I gave your Honor earlier, and your Honor may want to take these matters up with the other matter about Torchmark; but, I had filed a motion asking for further discovery - very limited further discovery as [p. 885] regards Torchmark and its responsibilities. I'll address that now or later, whatever your Honor wishes.

THE COURT: I'm not sure what you have filed.

MR. ROEDDER: We have conducted in cooperation with Frank discovery of Torchmark, and I felt at the end of things that we need a little bit further discovery to more fully develop Torchmark's liability. And what I have asked for, and paragraph number 1 is really, to me, the most important thing.

THE COURT: Okay.

MR. ROEDDER: Torchmark has withheld documents and redacted or whited out information in documents on the ground that what was withheld or redacted

was privileged and protected from discovery. They did not provide any kind of a log to give us any kind of a description of subject matter or who wrote it or under what circumstances or when or -

THE COURT: (Interposing) You mean things that they withheld?

MR. ROEDDER: Yes, sir. And, I really think in order to test their claim of privilege we need a log with the information that I have asked for in paragraph one so we can look and satisfy ourselves "it really is" or "I can't tell" "let your Honor look at it" or "it is really not." And we want that produced, and that is paragraph [p. 886] number one. I really think -

MR. PENNINGTON: (Interposing) We did a lot of the description of what we withheld in the responses themselves, all we withheld were litigation reports discussed in pending litigation, and that is it.

MR. ROEDDER: I don't - maybe Frank remembers better than I.

MR. PENNINGTON: We had an agreement, Frank and I, that covered that.

MR. WILSON: Well, that is all you withheld on the claim of privilege, but clearly you redacted the, for example, minutes of the board of directors meeting that dealt with subjects other -

MR. PENNINGTON: (Interposing) But, that is not the issue he is addressing, and I did that pursuant to the agreement.

MR. WILSON: That's right. I think what Bill is saying is, he can't test whether you redacted something that you shouldn't have redacted or not.

MR. PENNINGTON: Well, your Honor, he -

MR. ROEDDER: (Interposing) Your Honor, telling us it is a lawyer's report or a legal report on a legal matter doesn't really get it, because we need who was present -

THE COURT: (Interposing) You are saying that [p. 887] in the minutes of the meeting they redacted some of the minutes -

MR. ROEDDER: Yes, sir.

MR. PENNINGTON: Your Honor, we have - general counsel provides a litigation report to the board of directors. I mean, that is privileged. There is no question that is privileged. I'm not going to show it to Bill. That is why it is privileged.

THE COURT: Okay.

MR. PENNINGTON: And as far as the rest of the stuff -

THE COURT: (Interposing) Okay. Get Tommy Kirk in here.

(THEREUPON, a short break in the proceedings was had.)

THE COURT: All right, let's go on.

MR. ROEDDER: Yes, sir.

THE COURT: Okay.

MR. ROEDDER: We would like a description of the document, its date, the author, to whom it was directed, and the things that we want to ask to see if it is really privileged. For example, if somebody stands up in a board meeting and says – a lawyer, and says, "We got fifteen cases pending, three of them are cancer exchanges and four of them are on other insurance fraud." That is a [p. 888] business kind of thing. I think there is plenty of law to support that that is not privileged, that is not a confidential communication, even though it is a lawyer-client communication. It is not intended to be privileged.

We have got issues in this case regarding when Torchmark knew or should have known about this fraud and done something to stop it. And, those kinds of documents and that kind of information is not privileged, and goes to the heart of when did they know or when they should have known about it.

MR. PENNINGTON: It is a matter of public record when the cancer exchange lawsuits were filed, and that were filed – Frank was among the first. There was a couple of little things prior to that, but that has all been gone through in the depositions. None of that has anything to do with what is really going on here, is they want to see what other kind of other lawsuits they can drum up by getting their hands through to the top.

MR. ROEDDER: (Interposing) That is not right. That is all baloney.

MR. WILSON: That is to decide the issue, but it might be a legitimate reason to look at it; but, it is really not germane here. But, still, there is two parts of it. There are things that were not provided.

[p. 889] THE COURT: Just a minute. Y'all excuse me a minute.

(THEREUPON, a short recess was had.)

THE COURT: All right.

MR. WILSON: The way I understood the production was, there is information, for example, in the minutes that had nothing to do with this lawsuit and nothing to do with the issues that are involved here, and it is an irrelevant question or discoverability question. I do not understand that everything that was redacted from those minutes is privileged.

MR. PENNINGTON: No, not by any means. I mean, you had discussions with potential mergers, potential acquisitions, and Frank and I agree –

MR. WILSON: (Interposing) What was going on in another city –

MR. PENNINGTON: (Interposing) And Frank and I agreed that all that stuff could be redacted, everything that was within the scope of what he asked for was put down there unless it was privileged, if it was privileged I put a little stamp on it. And the only thing that was privileged was the discussions of pending litigation.

MR. GEWIN: Judge, we developed a voluminous record on this issue. This is a fairly straight-forward and simple issue. The state court has a stack of [p. 890] depositions there. During those depositions you can look from the beginning to the end, there was no reservation in the record about, "We want to get some more documents; we reserve our right for more documents to be produced to conclude this deposition." They didn't come

back to the court. This is an action for the 23rd hour, just to delay this thing and drag it out. If the Court has any questions about it, the court can look at the depositions. If the court has any questions – the slightest question as to whether or not you have enough information to rule on that issue you can –

THE COURT: (Interposing) Do you have a list of the documents they withheld, Mr. Roedder, that you want –

MR. ROEDDER: (Interposing) No, sir. I never received such a list.

MR. PENNINGTON: And, your Honor, we have another problem. If we were to be ordered to give him a privileged log, then we are looking at another 30, 40 days before we can do it, because they didn't copy all the documents that was produced. We put a bunch of stuff in a room for them. They copied what they wanted, which was not everything we produced. We have got to go back and get those documents together again, and, then, from that determine what was withheld as privileged.

[p. 891] MR. ROEDDER: I don't know how long it is going to take them or what the logistics are, but I do know that we asked for these documents. They were withheld or redacted with a claim of privilege, and we were provided insufficient information about them to challenge the privilege, and I really think if there is any injury for the Torchmark liability it is in those documents. They are being withheld as privileged. And, then, I'm not saying they have to produce the documents themselves,

they need to tell us about them so we can know that they really are the –

MR. GEWIN: Judge, I think it comes far too late. They should have raised that before these depositions, they should have raised it during the depositions, or at some time prior to this final hearing on this matter. We went to all the trouble to get those documents. Plaintiff counsel reviewed them, the depositions went forward, there was no reservation in any of the depositions that I found about more documents. They asked the president of the company, the chairman of the board. They asked for certain questions on everything related to the two companies and what knowledge was known, and when they knew it, and what reports you had. All of that was gone into in detail. At no time did I hear in any deposition that I attended, "Wait a minute, we need to get [p. 892] more documents before we can complete this deposition."

MR. PENNINGTON: Well, not only that, your Honor, but Frank and I had a specific agreement that the way we did it was the way that we were going to do it back in March. If this issue was going to be raised, it should have been raised then, not now. We had a specific agreement that I would redact it, that I wouldn't produce a log of it, and here is what we were going to do, and we were going forward. I feel like Frank is satisfied with what we did. I asked him if he was, he said he was.

MR. DODSON: Your Honor, would you give Frank and Mike an opportunity later on this morning to talk about these documents and the agreements they had before you rule on this matter?

THE COURT: Sure.

MR. WILSON: I do want to say this, that what all I said has already been quoted, but I think you will find that my response, and the agreement made by discovery says that they will identify in some fashion the - I did not ask for the things that Bill was asking for, they were identifying in some fashion the privilege.

Unless I'm misunderstanding I'm satisfied with what they produced, and I understand the only privileged documents that have been withheld are the reports made to the board of directors by general counsel [p. 893] as to pending lawsuits. And, I don't challenge - I don't, and I don't mean to speak for Bill. I don't challenge the privilege on that aspect of it.

THE COURT: Mr. Pennington, you looked at all the documents?

MR. PENNINGTON: I looked at every document that -

THE COURT: (Interposing) And you're telling the court the only thing that has been withheld are what?

MR. PENNINGTON: The minutes were redacted to eliminate things that dealt with a subsidiary other than Liberty National, matters other than cancer policies with Liberty National first of all. That was by agreement. Any reports on pending litigation were deleted. Any assessments of litigation, you know, of this type here, the - what we think this case is worth or that case is worth, any of that kind of stuff was withheld.

There is no document of the type he has described that was withheld. I have looked at everything

that was produced that was made available for production, and I know of nothing of that sort that was withheld. The only thing that I'm aware of that was withheld were matters relating to litigation.

MR. ROEDDER: Judge, if it is that simple, if the redaction or withholdings of the minutes on litigation [p. 894] reports, it ought to be very simple. Some may be privileged and some may not be, depending on what I have asked for.

THE COURT: Okay. I've heard all the arguments and I'll withhold ruling on it until this afternoon. If you want to talk about it, y'all talk about it. And if you can resolve it, fine. If you can't, I will resolve it.

MR. ROEDDER: I have some other discovery matters if I could cover them briefly. Paragraph two in the motion before your Honor asks about the number of cancer policies that were changed, the numbers of exchanges that occurred on a year-by-year basis, the relevance. And the reason we need that is that they had two cancer exchange programs, at least, maybe more. They had supplemental policies that were sometimes exchanged, and senior policies that were sometimes exchanged. There was a lot of exchanging in cancer. They are getting released if the release stands like it is as far as for all that up until the current time. And, that includes not only what was done back in 1986 that the basic evidence was about, but things that occurred later. So, we would like to show their continuing switching and continuing fraud continued up until this day, and that is the information that we need about -

THE COURT: (Interposing) Up until today?
 [p. 895] They are still doing it?

MR. PENNINGTON: That is not true. Our last cancer exchange program ended in '91. In fact, the last policy we came out with, and I filed an affidavit on this too, is that the last exchange program - I mean the last policy we came out with you weren't eligible for it. So, no, we are not.

MR. ROEDDER: And there is a problem with the affidavit, and that is another problem. I got an affidavit faxed after I left Mobile, and my secretary sent over last night, saying - and, I guess to address this issue, saying that the last cancer exchange program, very carefully worded, began in 1990, and no additional cancer exchange programs have occurred. Well, that doesn't answer the question. The question is, have any cancer policies been exchanged? Have individuals been defrauded into exchanging policies, whether you had a program as such or not? And they duck that issue.

MR. PENNINGTON: No, we don't duck that issue.

THE COURT: What has that got to do with your objectors?

MR. ROEDDER: The release that they are getting, my objectors got switched early and late, past the time that they say they quit switching in 1990 or '91. Some of my folks still got switched, and a lot of people [p. 896] still got switched. They are getting released from all that if the release holds as broad as -

THE COURT: (Interposing) Well, it is part of the class they are getting released.

MR. ROEDDER: As I understand it, the class involves any switch at any time up until now. And, so, I would like to show for the record that they have continued these exchanges up until now, and the affidavit - and that is why I have asked the question that I want your Honor to, hopefully, have them answer. They filed an affidavit yesterday that we object to that ducks the question. I'll show you, your Honor, the affidavit -

MR. PENNINGTON: (Interposing) What was the Fairness Hearing about?

THE COURT: I thought that is what we had the Fairness Hearing for. I'm not trying the Fairness Hearing. I understand your motion. Let's move on to something else. Denied.

MR. ROEDDER: For the record, your Honor, on that affidavit, it is the affidavit of Mr. Morrison, and we object to that as coming too late. We can't examine the man, and it is hearsay.

MR. PENNINGTON: Your Honor, I don't really have a strong opinion on that. I was simply responding to an argument that came out of the blue in their paper that [p. 897] said -

THE COURT: (Interposing) Anything that wasn't filed by the cutoff date is not going to be accepted, period.

MR. ROEDDER: Okay. The other affidavit, again, that was filed yesterday, is Mr. Linderman, and, again, we object to it as too late.

THE COURT: What did I just say?

MR. ROEDDER: I just wanted to identify for the record that the affidavits were -

THE COURT: Any of them, yours, his, or anybody else. It is just like the fax I had thrown in the trash can this morning. I didn't even look at it, too late. Sorry.

MR. ROEDDER: That was paragraph two, the exchanges that we have asked for. Paragraph three in the motion before your Honor has miscellaneous items in it that were asked by Frank in interrogatories or Requests for Production and were not responded to. One has to do with regards to the compensation of officers and directors, how was it affected by Liberty National performance, officers and directors of Torchmark.

Another has to do - there are a bunch of loan servants here where Torchmark employees would be loaned to Liberty National and Liberty National employees [p. 898] would be loaned to Torchmark to do services. And, we would like to know what - and they have identified those people, and there were a number of them, 15 to 20 of them, we want to know what services they provided, we want to know a little bit more about the interchange of the employees between those two companies. That is paragraph 3-B.

MR. PENNINGTON: Your Honor, I would suggest that these issues be ruled upon as part of your order. We have got all the evidence before you, and I think the only way to resolve this is have you review the evidence and decide whether you think it is adequate or not. I believe Frank has precluded it is adequate or else he

would have said so; but, it is up to you to say whether it is adequate or not. And, until you have looked at what the depositions say and how far they go in these issues, I don't see how -

MR. GEWIN: And that was gone into in these depositions.

MR. ROEDDER: Okay. And I'm not going to push the matter, but what happens in depositions is we would ask an individual, we couldn't ask Liberty National about the compensation of all directors; but, at any rate, I think it is adequately set forth in my Motion for Discovery that we want. We will leave that in your Honor's good hands.

THE COURT: All right.

MR. ROEDDER: I believe that is all I have. [p. 899] Thank you.

THE COURT: Okay. Is that it?

MR. ROEDDER: That is all I have, your Honor.

MR. WATSON: Slade Watson here.

This is not a request for a ruling on the pending motion for -

THE COURT: (Interposing) Well, then I don't care about hearing it.

MR. WATSON: Sir?

THE COURT: I don't care about hearing it, then.

MR. WATSON: Well, one thing I need is a clarification to a motion that I think you already ruled on.

THE COURT: What do you need to clarify?
Whether it is denied or -

MR. WATSON: Well, what happens is that under the Fairness Hearing you denied the motion that we had to identify the subclass.

THE COURT: I remember that.

MR. WATSON: In the order of February 4th you specifically recognized the subclass that we asked you to identify. We then filed a motion for you to reconsider which motions expired on its terms - to expire on April the 25th, and we would like to ask your Honor in its order [p. 900] - in your order to simply note that that motion was filed with the court, the court declined to rule on it, and to allow it to be denied on it by the time.

THE COURT: Well, I guess the record will show whether or not I ruled on it or not. I won't put in there that I declined to rule on it.

MR. GEWIN: I think you did rule on it, your Honor. I don't believe it was a final judgment, it hasn't been finalized yet; but 42 days won't start to run until the final order.

MR. PENNINGTON: I want the record to show I don't agree that you recognized any subclass in the February 4th order.

MR. WATSON: Just to be clear for -

THE COURT: (Interposing) Wait, wait. That is all I want.

MR. WATSON: All right.

THE COURT: I'll see you.

MR. WILSON: Judge, I think it is probably appropriate for the class counsel to speak to the motion we filed to amend the - to modify your prior order in which we sought to delete Torchmark as a release. The basis of that was it was pointed out during the course of the Fairness Hearing, and quite properly so, that, perhaps, there had not been as much discovery on that issue as there [p. 901] should have been, and there was not enough factual basis submitted to the court to make that decision. As with many issues in this case, we would love to have Torchmark deleted from that release; however, having done the discovery, we think it is appropriate and necessary to look at the possibility of a claim against Torchmark. We are not willing to have the settlement lost as a result of deleting Torchmark from the release.

I understand from the response that has been filed on behalf of Torchmark and Liberty National that that is a non-negotiable item, and as class counsel we think the benefits provided to the class members by this settlement are such that the possibility of pursuing Torchmark and being successful in that is not great enough to justify turning down the substantial offer that is on the table at this point. So, I just thought it important that we present that to the court, also. Obviously, you will have to independently determine your feeling on that by looking at what we have done on discovery. But, I thought it was important -

THE COURT: (Interposing) I knew when I set this hearing with Beasley not here that it would go a lot smoother.

Okay, anything else?

MR. ROEDDER: Well, Judge, we feel differently [p. 902] than Frank.

THE COURT: All right, any written arguments y'all want to submit about what the evidence showed in the depositions go ahead and submit it within seven days. I haven't had the depositions and haven't read the stuff; but, anything that you want to point out or want to make sure I look at in any of the depositions or anything, file that in writing within seven days. In addition, file any additional arguments that you want to make in writing within seven days.

MR. PENNINGTON: Your Honor, just so I'm clear, I wouldn't expect to file anything in response, but if I needed to, if I saw something that I needed to respond to, would I have that opportunity?

THE COURT: File it. File whatever you want to.

MR. ROEDDER: Within seven days?

THE COURT: Yes.

MR. WALDROP: On the motion to modify the court order, Frank, that y'all filed, that really had two grounds: one dealt with Torchmark and would be - dealt with the release. As I understood what you had to say about Torchmark, y'all still maintain the same position in that regards too; that is, that the release should be limited?

[p. 903] MR. WILSON: Yes, very much so. I think that as we have gone on, and discussions have been had, it has become more and more clear that it is less and

less clear exactly how it is limited, but I think the judge has indicated its feeling on switches released and switches not released.

MR. PENNINGTON: With the exception of old policyholders who never offered -

THE COURT: That is right. They still get the benefits. You're talking about the old policyholder if they didn't get switched - got offered and didn't get switched.

MR. PENNINGTON: That is a release claim, too.

MR. WILSON: It is not the intent of plaintiffs' counsel, and my construction of what the court has said, and I guess I shouldn't speak for the court, it is not the intent of plaintiffs' counsel for a claim unrelated to the switch to be released. I mean, we can all think of hypotheticals on both sides, and you can get down to a hypothetical -

THE COURT: (Interposing) We can play "what ifs", but I don't let the children play "what ifs".

MR. WALDROP: I just wanted to point out to the court that in the motion to modify that dealt with Torchmark, class counsel had said to limit - in other [p. 904] words, what is proposed now in the release - excuse me, in the notice and prior order is much broader than what class counsel has here. And we are just saying on behalf of what class counsel put forward, the objectors, at least we do agree that the release should be limited to this that the class counsel has proposed. In other words, the entire litigation, as we had appreciated it, dealt with the relative value between the old and the

new, and the failure to disclose on the limits on radiation and chemotherapy, not independent frauds that dealt with even when they were making exchanges. Independent fraud, that had nothing to do with this issue, then our position is that it is not released.

MR. PENNINGTON: This is the same – this is just another version of the same argument we just had where you said you were going to take all of these things after the appeal.

MR. WALDROP: Well, I wanted to point out in their order they set out some language here –

THE COURT: In their motion?

MR. WALDROP: Excuse me, I'm sorry.

MR. PENNINGTON: But, your Honor, I signed a written document on June 16th, 1993, saying, "This is the release which I agree to," and that is what is on the table for approval at this time.

[p. 905] MR. WILSON: I don't believe that the court is bound by that. I mean, many things have happened since then, and I think, obviously, the court can decide –

THE COURT: (Interposing) Well, I'm going to issue my order on the whole –

MR. WILSON: – how broad that release is going to be.

I'll put it this way. I think there may be some difference of opinion between Liberty National counsel and class counsel as to how to construe the language of that

release. And, I think it is important that your Honor's order make clear how you – you have got to make it clear to tell everybody, because I do think Mike and I have a very difference of opinion.

MR. PENNINGTON: I don't think we do. I think it is a matter of semantics; but, every time somebody wants to change a word here or there it can have a big impact. It is an expensive settlement for us, your Honor.

MR. WALDROP: But, the language is – of the release that you wrote is about this broad and what – the language that class counsel is talking about is here.

MR. WILSON: I think his is about that long here, and mine is that long.

MR. WALDROP: Anyway, it is very – it is a very significant issue, your Honor. That is all.

[p. 906] THE COURT: Okay.

What is your-all's problem between y'all?

MR. PENNINGTON: I don't think that we have one. I think it is a fear – that we have a fear on Frank's part. Every time we come up with a specific example, I don't think we have ever disagreed on a specific example.

MR. GEWIN: Our only position is, your Honor, we are paying a lot of money for that release. We bargained for that release. It was in the agreement that the parties signed all four –

THE COURT: (Interposing) Well, my only deal is, if it is not fair I'm not going along with it. If it is fair I'm going to let it go.

MR. GEWIN: Judge, that is your job, because somebody else said that earlier.

MR. WALDROP: Your Honor, that was the language that class counsel had proposed, and in their Motion to Modify, and I'm just saying I know on behalf of us, we agreed that that language is much, much fairer than the language that was previously put in the notice that was sent out.

MR. PENNINGTON: And the reason he does, your Honor, is because if you say that then the case we have talked about earlier where you said that if what I was [p. 907] saying was right was right, it is released, wouldn't be released. That is why he is saying that. Because he is going to say don't arise out -

THE COURT: (Interposing) I understand the argument, and I'll rule.

MR. WALDROP: Thank you.

THE COURT: Okay, anything else? (No response.) All right. I would like to see in my chambers the class counsel, counsel for Liberty National, Bill, Norman, and Charles.

(THEREUPON, court stood adjourned at 10:35 a.m.)

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IN THE CIRCUIT COURT WITHIN AND FOR
THE COUNTY OF BARBOUR
STATE OF ALABAMA
CLAYTON DIVISION

CHARLIE FRANK ROBINSON,)	PLAINTIFF,)	<u>CIVIL ACTION</u> <u>NO. CV-92-021</u>
VS.))	
LIBERTY NATIONAL LIFE))	
INSURANCE COMPANY,))	
DEFENDANT.))	

REPORTER'S CERTIFICATE OF COMPLETION

I, ANDREW J. CLINGAN, JR., RPR, CCR, Official Court Reporter for the Third Judicial Circuit of Alabama, do hereby certify that I have this date completed and filed with the clerk of the trial court the original and three (3) copies of a true and correct transcript of the proceedings had by means of Computer-Assisted Transcription by CIMMARON as designated by counsel for the Appellants. All pages are numbered serially in the top right-hand corner, and ending with the page number appearing at the top of this certificate.

I certify that a copy of this certificate has this day been served on: Clerk of the Supreme Court of Alabama, counsel for the Appellants, and counsel for the Appellee.

Dated this the _____ day of July, 1994.

/s/ Andrew J. Clingan, Jr.
Andrew J. Clingan, Jr.